

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

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BY:

Defendant.)

ROXANNE E. TARN, CR
Certified Court Reporter
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APPEARANCES

On Behalf of the State:

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On Behalf of the Defendant:

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1 (Whereupon, the jury enters the courtroom.)

2 THE COURT: We are on the record in the State
3 of Arizona versus Steven Carroll DeMocker. Mr. DeMocker is
4 present with the defense attorneys, Mr. Hammond, Mr. Sears
5 and Ms. Chapman present. The State is represented by
6 Mr. Butner, and the jury is present also.

7 Mr. Butner.

8 MR. BUTNER: Good morning, Judge.

9 The State would like to call Cheryl
10 Hatzopoulos to the stand, please.

11 THE COURT: Ma'am, if you would please stand
12 where the bailiff directs you, and raise your right hand to
13 be sworn by the clerk.

14 THE CLERK: You do solemnly swear or affirm
15 under the penalty of perjury that the testimony you are about
16 to give will be the truth, the whole truth, and nothing but
17 the truth, so help you God?

18 THE WITNESS: I do.

19 THE COURT: Please be seated here at the
20 witness stand.

21 Ma'am, would you please start by stating
22 and spelling your full name.

23 THE WITNESS: Cheryl Hatzopoulos.

24 C-H-E-R-Y-L, H-A-T-Z-O-P-O-U-L-O-S.

25 THE COURT: Thank you.

1 Mr. Butner.

2 MR. BUTNER: Thanks, Judge.

3 CHERYL HATZOPOULOS,

4 called as a witness, having been duly sworn, testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. BUTNER:

8 Q. I was correcting my spelling of your name. It is
9 H-A-T-Z-O-P-O-U-L-O-S?

10 A. Correct.

11 Q. I had the "U" in the wrong place with the "O."

12 A. Happens all the time.

13 Q. That is a Greek name; isn't it?

14 A. Yeah.

15 Q. That is what I thought.

16 Good morning. Thank you for coming.

17 A. Thank you.

18 Q. In what city or town do you presently reside?

19 A. I reside in Glendale, Arizona. Was technically
20 Phoenix but have a Glendale mailing address.

21 Q. How long have you lived in Glendale, Arizona?

22 A. Seven years.

23 Q. Do you own any property in the Prescott area?

24 A. I do.

25 Q. What kind of property do you own in Prescott,

1 Arizona?

2 A. I bought a house about 3/4 of a mile from here.
3 Two-story historic home, and we rent it out as vacation
4 rental. We use it occasionally and rent it out in the
5 meantime.

6 Q. How long have you owned this house?

7 A. Three years.

8 Q. What is the address of the house that you own in
9 Prescott?

10 A. 840 Country Club Drive in Prescott, 86303.

11 Q. And, by the way, what is your occupation?

12 A. I am a real estate appraiser.

13 Q. And so, obviously, you have experience in the real
14 estate business; right?

15 A. Uh-huh.

16 Q. Is that yes?

17 A. Yes.

18 Q. And so you bought this house at 840 Country Club
19 Drive in Prescott, Arizona. For what purpose did you
20 indicate you bought it?

21 A. Well, we just wanted a second place to get out of
22 the heat in the summer and square dance up here. That is
23 what we do. Fell in love with Prescott. Just wanted a place
24 to get away from Phoenix. 115 degrees gets a little old in
25 the summer. We don't get up here often, so we rent it out to

1 help cover the cost of the home.

2 Q. You said you come up to square dance; right?

3 A. As much as possible.

4 Q. You've square danced, actually, right here on the
5 square; right?

6 A. Love it. It is our favorite thing to do.

7 Q. So did you own this house back in the year 2008?

8 A. I did.

9 Q. When, in fact, did you purchase the house?

10 A. A year before that. August, I believe, of 2007,
11 end of July. July 29, I think, 2007.

12 Q. Okay. And sometime in August of 2008, were you
13 contacted to rent the house out?

14 A. Yes.

15 Q. And do you recall who contacted you to rent the
16 house out for a period of time beginning Tuesday, August 19th
17 of the year 2008?

18 A. Renee Girard.

19 Q. And was the house available for rent during that
20 time frame?

21 A. Well, she wanted a two-week rental, and I already
22 had committed two days of that, the Friday and Saturday.
23 Let's see, Friday, August 22nd and Saturday, August 23rd were
24 already reserved, so I didn't have that full 14-day period.

25 Q. So you had a weekend that had already been rented

1 out right in the middle of that time frame?

2 A. Yes.

3 Q. And the time frame that she wanted it for was from
4 when to when?

5 A. She wanted from August 19 through September 2nd,
6 Tuesday through Tuesday, a two-week period.

7 Q. Tuesday through Tuesday?

8 A. Two weeks.

9 Q. Two weeks. Is that kind of unusual to rent
10 Tuesday through Tuesday?

11 A. Yeah. Usually people rent weekends, or they rent
12 Sunday through the following Saturday. It is usually just
13 weekend time, so that was an unusual request.

14 Q. And did that cause you any concern as a result of
15 the nature of that request?

16 MS. CHAPMAN: Objection, Your Honor.

17 THE WITNESS: Yeah.

18 MS. CHAPMAN: Objection. Speculation,
19 foundation, relevance.

20 THE COURT: Overruled. You may answer that.

21 THE WITNESS: Yeah. I mean, it was just a
22 little different, which, you know, kind of sticks in your
23 mind, but not unheard of. We do rent occasionally, people
24 come for conferences or something and rent business time.

25 MR. BUTNER: Right.

1 Q. And then, of course, you had that weekend knocked
2 out of the middle, too?

3 A. Right.

4 Q. Was that a little strange also?

5 A. Yeah. That was the only request I have ever had
6 like that where they wanted -- even though I didn't have the
7 full time period, that they wanted to rent part and come
8 back. I never had that before or since.

9 Q. So what was your understanding, then, as to the
10 reason why the house was being rented by Renee Girard?

11 A. I asked her that, and she said she just wanted to
12 get away.

13 MS. CHAPMAN: Objection. Hearsay.

14 THE COURT: That is sustained.

15 MR. BUTNER: Thanks, Judge.

16 Q. Remember that I told you that you can't tell me
17 what Renee Girard said. That is hearsay.

18 A. Oh.

19 Q. What was your understanding as to the reason for
20 the rental of this time frame?

21 A. To just get away.

22 Q. Did you know where Renee Girard was living at the
23 time she was renting this house?

24 MS. CHAPMAN: Foundation.

25 THE COURT: Sustained.

1 It was a yes or no. That may be answered
2 strictly as a yes or no answer.

3 MR BUTNER: I will back up and take another
4 run at it, Judge. Thanks.

5 Q. Did you have an understanding as to where your
6 renter was coming from to rent the house?

7 A. Yes.

8 Q. Where?

9 A. Quite close, actually. My understanding was that
10 they lived real close by, right there in Prescott.

11 Q. Someplace here in Prescott?

12 A. Yes. Very short distance from my house.

13 Q. In fact, had you been provided with residential
14 information as to where they were living?

15 A. I didn't ask for an exact address, but it came
16 back on the paperwork. I never looked up to see how close
17 that is to my house.

18 Q. Let me show you what has been marked as Exhibit
19 3268. You have got your own paperwork with you. Those are
20 your notes and so forth?

21 A. That is the original, yeah.

22 Q. Let me show you what has been marked as Exhibit
23 3268.

24 Would you thumb through that, please.

25 A. (Whereupon, the witness reviews a document.)

1 Q. Do you recognize the documents in Exhibit 3268?

2 A. Exact copy of the original.

3 Q. Exact copy of the original what?

4 A. Contract that they signed to rent the home.

5 Q. When you say "they," who is they? You talked
6 about Renee Girard. Is there somebody else involved also?

7 A. She called to rent the house, I talked to her
8 several times, but she said that Steven DeMocker would be
9 paying for it, and he signed a credit card.

10 Q. You have that information on 3268?

11 A. Yes.

12 Q. That is a true and correct copy of your records
13 concerning the transaction?

14 A. It is an exact copy.

15 MR. BUTNER: I move for the admission of 3268
16 at this time.

17 MS. CHAPMAN: No objection.

18 THE COURT: 3268 is admitted.

19 BY MR. BUTNER:

20 Q. Referring to the second to the last page of 3268
21 there, does that particular portion of the document indicate
22 the address from which they were coming?

23 A. Yes.

24 Q. What is that?

25 A. 1716 Alpine Meadows Lane, Number 1405, Prescott,

1 Arizona, 86303.

2 Q. Is that under Mr. DeMocker's name?

3 A. Yes. Steven DeMocker.

4 Q. In fact, that is what you have entitled in your
5 documents the rental agreement; right?

6 A. Yes.

7 Q. Okay. And did he sign it?

8 A. Yes.

9 Q. At least that was your understanding; right?

10 A. Right.

11 Q. By the way, I see that Cheryl is spelled a little
12 differently also; right?

13 A. Where?

14 Q. Down at the bottom there, right beside Steve
15 DeMocker.

16 A. Cherie. That is my nickname. That is what I go
17 by all the time.

18 Q. I thought maybe I got that wrong, too. So you go
19 by C-H-E-R-I-E?

20 A. Yeah. That is what I am always called. That is
21 why I set up the checking account as, so that is the name I
22 use for Prescott.

23 Q. Okay. What was the -- tell us exactly the days
24 that it was rented for, then, pursuant to this rental
25 agreement.

1 A. Tuesday, August 19, 2008, and then leaving Friday,
2 August 22nd, 2008. And then coming back Sunday, August 24th,
3 2008, and leaving Tuesday, September 2nd, 2008.

4 Q. And what was the amount of rent for the property
5 for that time frame?

6 A. \$1400 even.

7 Q. And was a security deposit put down also?

8 A. There is a separate security deposit of \$250. It
9 is on a credit card. If there is no damage done, we void
10 that. That is not actual charges authorization.

11 Q. Did you have a conversation with Ms. Girard
12 about -- or during the rental process about the amenities at
13 this particular residence?

14 A. Yes.

15 Q. What kind of amenities did you describe for
16 Ms. Girard?

17 A. At the time we had phone service, internet
18 service, television. Yeah, we have since taken out the
19 phone, but at the time I told her we had all that, and that
20 there is instructions how to use all that stuff if they had
21 any problem.

22 Q. Did you have instructions located there in the
23 residence?

24 A. Everyone is told that. There is two places I have
25 full instructions in case they have problems with accessing

1 the wireless internet with my password and numbers for Cable
2 One and everybody, and Cable One had instructions if anyone
3 has trouble to help them out with -- they had permission to
4 help people access the wireless if they ever had a problem.

5 Q. So you even provided them with a password to use
6 your Wifi on the internet?

7 A. It is written in two places in the house,
8 downstairs and upstairs in the cabinets there, and everyone
9 is told that when they pay for the rental. We send them a
10 letter with, you know, information how to get in the house
11 and where to find all that information if they have any
12 trouble.

13 Q. And, to your knowledge, did they use the house
14 during that time frame?

15 A. Yes.

16 Q. And were there any problem with their usage of the
17 house?

18 A. Well, the cleaning. She didn't want to -- there
19 is a cleaning fee. I have to pay the neighbors to go in and
20 clean each time. Since they left and came back again, she
21 didn't want to pay two cleaning fees. She offered to clean
22 the house the second time, but didn't quite tackle
23 everything.

24 Q. Not quite as clean as everything?

25 A. The neighbor went in and checked. It looked like

1 the sheets weren't washed, and I had to pay the neighbor the
2 second time.

3 Q. Do you have knowledge as to whether they used the
4 wireless internet?

5 A. I assume everybody that goes in the house uses it,
6 and I never hear anything unless people can't access it. I
7 don't have a way to know what people use in the house.

8 Q. You don't have any way of knowing whether they
9 used it; is that correct?

10 A. Right.

11 Q. But they certainly had access to it during that
12 time frame?

13 A. Right. Free access.

14 Q. How was this paid for?

15 A. Credit card.

16 Q. And whose credit card paid for it?

17 A. Steven DeMocker.

18 Q. And do you have a document in that packet admitted
19 into evidence as 3268 that evidences the usage of
20 Mr. DeMocker's credit card to pay?

21 A. Yeah.

22 Q. Which one is it?

23 A. Well, the charge authorization form.

24 Q. Could I come forward and take a look at that. It
25 is this one here, the second one in?

1 A. I think it is the third one. I am looking for the
2 one that had the signature.

3 Q. Take a look at these, because these are the ones
4 in evidence.

5 A. Okay. This is the one I sent him. Here it is.
6 Here is where he signed it and sent it back.

7 Q. Okay. So it is -- all right. That is Bates No.
8 18935 for opposing counsel. Right here.

9 A. Uh-huh.

10 Q. Is that yes?

11 A. That is a yes.

12 Q. That is the charge authorization form?

13 A. Yeah. That is exactly what he sent back
14 authorizing the charge on the credit card.

15 Q. I noticed something that struck me as a little
16 peculiar under the column that says "nights." It says three?

17 A. It is a typo.

18 Q. You made a mistake?

19 A. We recently started renting out the house and
20 using the program. I was not familiar with the program, and
21 I kept cloning over it and writing over it. Three times I
22 had to type 12 days, and I missed that one. That is a typo.

23 Q. It should have said 12 days?

24 A. 12 nights like the rest of the contract.

25 Q. \$1400 for 12 days?

1 A. I would love to get \$1200 for three days, but that
2 didn't happen.

3 Q. I am going to put this on the overhead, Exhibit
4 3268. Let me see if I can actually focus it. It is
5 semi-focused; right? Okay.

6 Now, this is Page 1 of the pile of
7 documents here. This is the reservation confirmation; right?

8 A. Yes.

9 Q. Who made the reservation?

10 A. Renee.

11 Q. And then this telephone number right here, that
12 was the number that she provided to you?

13 A. Yeah. I have since changed the contract, and I
14 don't have that on there anymore, but, yeah, I had to refresh
15 my memory.

16 Q. Okay. And it shows the arrival date and the date
17 for which it was rented. Tuesday, August 19 through Friday,
18 August 22nd; right?

19 A. Right.

20 Q. And then Sunday the 24th of August through
21 Tuesday, September 2nd; right?

22 A. Right.

23 Q. And the total amount, which is very hard to read
24 on the overhead, but the total amount for 12 nights, \$1400;
25 right?

1 A. Right.

2 Q. You don't have a cleaning fee mentioned in there,
3 but you have a security deposit mentioned down here?

4 A. Right. We included the cleaning fees in all the
5 fees in the 1400, including the tax.

6 Q. So \$250 security deposit; right?

7 A. Right.

8 Q. And then the second page is what is entitled
9 "rental agreement." And I am going to zoom into this bottom
10 portion down here. Even at the outset, apparently, you knew
11 that Mr. DeMocker was going to be basically as the renter?

12 A. Yes.

13 Q. Ms. Girard had informed you of that?

14 A. Yes. She described him coming with her before and
15 mentioned his name.

16 Q. And, of course, his address is right here;
17 correct?

18 A. Right.

19 Q. And then this is part of the charge authorization
20 form; right?

21 A. Correct.

22 Q. And when I say part of it, this part doesn't have
23 any signatures on it; right?

24 A. That is what I sent him.

25 Q. So you sent it to Mr. Steven DeMocker at this

1 address down here, 1716 Alpine Meadows Lane?

2 A. I e-mailed it.

3 Q. You e-mailed it to him?

4 A. I e-mailed it to either him or Renee. I don't
5 remember.

6 Q. And you were provided with this credit card number
7 from Mr. DeMocker?

8 A. Correct.

9 Q. And then you got Mr. DeMocker's phone number, 928
10 713-1919?

11 A. Yes.

12 Q. All right. This indicates Ms. Girard as the
13 renter. Was this earlier in the process, or what is the
14 purpose of this particular document?

15 A. It was just part of the original contract, so we
16 have lots of phone numbers and all that, but I don't think
17 she filled that out. That is what I sent her, and we usually
18 ask for that to come back so we have lots of information on
19 the people; address, phone numbers, in case there is damage.

20 Q. You want to make sure you can follow-up if there
21 is damage; right?

22 A. Yeah.

23 Q. And then you come to the charge authorization
24 form, which was actually kind of turned sideways. Is that
25 part of your new program?

1 A. No. That is how it came back. I think it was
2 faxed back. I can't remember, because we give a fax or
3 e-mail, whatever is easier for people. If it is faxed, it
4 may have come in that way.

5 Q. When you say it was faxed back, you mean you think
6 it was faxed back from Mr. DeMocker?

7 A. Uh-huh.

8 Q. Is that yes?

9 A. I don't know who faxed it.

10 Q. In fact, I am going to turn this like this. It
11 actually shows a fax number up at the top with Mr. DeMocker's
12 name on it; right?

13 A. Yes.

14 Q. So it is your belief, at least, that it came back
15 from Mr. DeMocker by fax?

16 A. I believe that, yes.

17 Q. And going back to the agreement. This is the --
18 you have entitled it, or the documents are entitled "charge
19 authorization form"?

20 A. Yes.

21 Q. And this is the signature, the signed document
22 that you got back from Mr. DeMocker?

23 A. Yes.

24 Q. Authorizing \$1400 for three nights of rent?

25 A. Yeah. It should say 12.

1 Q. I am teasing you a little bit.

2 A. I know.

3 Q. Okay. And then I am going to back this up a
4 little bit. Actually, I will go to the top first.

5 This also came to you by way of fax from
6 Mr. DeMocker; correct?

7 A. Yes.

8 Q. This is the signed rental agreement?

9 A. Yes.

10 Q. And then backing this up a little. I hope nobody
11 gets dizzy from me doing this.

12 That has the terms of the contract in it?

13 A. Yes.

14 Q. 1400 plus the 250 security deposit, and it
15 outlines all of the days of rent; right?

16 A. Yes.

17 Q. All of the days it is rented, I should say. And
18 then down at the bottom it bears Mr. DeMocker's signature;
19 right?

20 A. Yes.

21 Q. Okay. And then there is one other document here,
22 which I am not sure -- yeah, that is it.

23 What is this particular document?

24 A. When we run the security deposit, it is just
25 authorization on a credit card. It is not an actual charge.

1 And I print out a receipt, and when they leave and there is
2 no damage, I can use this to access that transaction real
3 easily and void it, and basically, not charge them the
4 security deposit. So I always print that and add it to their
5 file, for my own ease of voiding it later.

6 Q. This, basically, locks in the security deposit on
7 the credit card, and you can undo the transaction?

8 A. Right.

9 MR. BUTNER: Thank you. I don't have any
10 further questions of this witness at this time.

11 THE COURT: Thank you, Mr. Butner.

12 Ms. Chapman?

13 CROSS-EXAMINATION

14 BY MS. CHAPMAN:

15 Q. Good morning.

16 A. Hi.

17 Q. I just have a few quick questions for you.

18 Both Mr. DeMocker and Ms. Girard gave you
19 their names; is that right?

20 A. I never talked to Mr. DeMocker.

21 Q. But Miss Girard gave you Mr. DeMocker's name?

22 A. Yes.

23 Q. He used his name in the documents with you?

24 A. Yes.

25 Q. And he used his credit card in the documents with

1 you?

2 A. Yes.

3 Q. And provided with you his local address?

4 A. Yes.

5 Q. And when Ms. Girard first contacted you about the
6 rental, she asked you if she could rent it for the entire
7 two-week period; is that right?

8 A. Yes.

9 Q. You informed her that you had already rented the
10 house for the intervening weekend; is that right?

11 A. Correct.

12 Q. So the reason for the break in the rental is
13 because of your previous commitment to other renters?

14 A. Yes.

15 Q. That is not the way she requested the rental
16 initially?

17 A. No.

18 Q. The house, as I understand, is a three-bedroom
19 house?

20 A. Three bedroom.

21 Q. And I think the contract says it can sleep up to
22 eight people; is that right?

23 A. It used to say ten people, but at some point we
24 changed the contract, and I don't remember if this one says
25 eight or ten.

1 Q. It accommodates a large number of people?

2 A. Yes. It accommodates a large number of people.

3 MS. CHAPMAN: All right. I have no further
4 questions. Thank you, very much.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you, Ms. Chapman.

7 Anything further, Mr. Butner?

8 MR. BUTNER: Nothing further for this witness.

9 THE COURT: Any questions for this witness
10 from the jury? I don't see any.

11 May the witness be excused?

12 MR. BUTNER: She may, Judge.

13 THE COURT: Before you leave, Ms. Hatzopoulos,
14 I need to make sure that you understand that the rule of
15 exclusion of witnesses has been invoked in this case. This
16 means that you cannot communicate in any way with other
17 witnesses about your testimony or about any other aspect of
18 this case until all witnesses have testified. It is best
19 that you not discuss the case with anyone until the trial is
20 the completed. However, you may talk to the attorneys about
21 the case as long as no other witnesses are present.

22 Do you understand?

23 THE WITNESS: I understand.

24 THE COURT: Thank you. Please watch your
25 step, and you are excused at this time.

1 Mr. Butner.

2 MR. BUTNER: I would like to call Detective
3 Steve Surak to the stand, Judge.

4 THE COURT: Sir, please stand where the
5 bailiff directs you, and raise your right hand and be sworn
6 by the clerk.

7 THE CLERK: You do solemnly swear or affirm
8 under the penalty of perjury that the testimony you are about
9 to give will be the truth, the whole truth, and nothing but
10 the truth, so help you God?

11 THE WITNESS: I do.

12 THE COURT: Please be seated at the witness
13 stand.

14 Would you please begin by stating and
15 spelling your full name.

16 THE WITNESS: Steven Surak, S-T-E-V-E-N,
17 S-U-R-A-K.

18 THE COURT: Thank you.

19 Mr. Butner.

20 STEVEN SURAK,
21 called as a witness, having been duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. BUTNER:

25 Q. What is your present occupation, sir?

1 A. I am a detective with the Yavapai County Sheriff's
2 Office.

3 Q. And how long have you been with the Yavapai County
4 Sheriff's Office?

5 A. Almost ten years.

6 Q. And how long have you been a detective?

7 A. Just over two years.

8 Q. When did you become a detective with the Yavapai
9 County Sheriff's Office?

10 A. The exact date was June 15, 2008.

11 Q. So you had been a detective all of about two weeks
12 when the Virginia Carol Kennedy homicide occurred; is that
13 correct?

14 A. Yes.

15 Q. Would you describe for us your training that
16 prepared you for your occupation, first of all, as a Deputy
17 Yavapai County Sheriff's Officer?

18 A. I attended the Northern Arizona Regional Training
19 Academy in 2002, August of 2002 through December of 2002,
20 Class 13, out in Prescott Valley. After graduation, I was on
21 field training for, what was it, 12 weeks.

22 My first duty station, I was stationed
23 down in the Yarnell area. Worked down there for a year.
24 Became proficient in D.U.I.s. Went through several trainings
25 in D.U.I.s and stuff like that. Became a certified drug

1 recognize expert, a qualified phlebotomist.

2 Q. What is a phlebotomist, by the way?

3 A. A person who draws blood.

4 Q. Certified drug recognition expert. What is that?

5 A. A person who goes through several hours of
6 training to become proficient in being able to identify
7 somebody who is under the influence of drugs or alcohol by a
8 series of psycho-physical tests.

9 Q. So, you are a certified DRE, you are a
10 phlebotomist, and what other additional training have you
11 received?

12 A. Also, I am a certified horizontal gaze nystagmus,
13 standard field sobriety test instructor, which means I teach
14 out at the Northern Regional Training Academy new recruits to
15 observe signs and symptoms of an impaired person.

16 After becoming a detective, I was sent to
17 the eight-hour basic forensic interviewing course. And then
18 after that, went through a 40-hour advanced forensic
19 interviewing course.

20 I have been to several classes of finding
21 missing and endangered or abducted children. And I think
22 that is about it.

23 Q. Okay. And in connection with the Virginia Carol
24 Kennedy homicide, how did you get involved with that
25 particular case?

1 A. I had woken up on the morning of July 3rd and
2 noticed that there was a voice mail on my agency issued cell
3 phone that I had on vibrate.

4 Q. So you didn't hear the call come in?

5 A. No, I did not.

6 Q. When you say July the 3rd, you mean July the 3rd
7 of the year 2008; right?

8 A. Yes.

9 Q. So what did you do?

10 A. I checked the message. It was several messages
11 from Sergeant Huante, telling me to get in contact with him
12 about a homicide that had occurred out Williamson Valley.

13 Q. Did you contact Sergeant Huante?

14 A. Yes.

15 Q. Approximately what time did you get in contact
16 with Sergeant Huante?

17 A. It was about 6:00 in the morning.

18 Q. And what did you do after that?

19 A. He advised me to go straight into the Yavapai
20 County Sheriff's Office located on Gurley Street, and that
21 they would be having a briefing there and to make sure to
22 attend the briefing.

23 Q. Approximately what time did you get into the
24 sheriff's office on Gurley Street?

25 A. About 6:30, 7:00.

1 Q. And did a briefing take place?

2 A. Yes.

3 Q. Who was the briefer?

4 A. I believe it was Sergeant Huante.

5 Q. And did you receive duties or tasks which you were
6 to perform in connection with this particular case?

7 A. Yes.

8 Q. What was your first duty or task to perform?

9 A. I was asked to go up to the second floor of the
10 sheriff's office and to get a visual observation of a person
11 that I was told was named Steven DeMocker and get a clothing
12 description of him.

13 Q. Okay. And so did you go up to -- where did you
14 go?

15 A. At the time it was the Prescott jail.

16 Q. So you went to the Prescott jail. Was
17 Mr. DeMocker in custody there?

18 A. I don't believe so.

19 Q. Wasn't in a cell?

20 A. No.

21 Q. And did you make a visual observation of
22 Mr. DeMocker?

23 A. Yes.

24 Q. What did you note?

25 A. I was instructed to get a description of what he

1 was wearing.

2 Q. So you took note of the clothes he was wearing?

3 A. Yes.

4 Q. What was he wearing?

5 A. Shorts, T-shirt, tennis shoes.

6 Q. Did you notice anything else about Mr. DeMocker at
7 that time?

8 A. No.

9 Q. Okay. You just noticed his clothes?

10 A. Yes.

11 Q. You say wearing shorts, T-shirt?

12 A. Yes.

13 Q. Are you sure he had tennis shoes on?

14 A. I believe so.

15 Q. Did you write a report about it?

16 A. No.

17 Q. And what did you do with this information about
18 how Mr. DeMocker was dressed?

19 A. I reported that to Detective Theresa Kennedy, who
20 was in the process of writing a search warrant at the time.

21 Q. Did you give her the description of the kinds of
22 clothes he was wearing?

23 A. Yes.

24 Q. Was that for insertion into the search warrant?

25 A. Yes.

1 Q. So whatever description you gave her for insertion
2 in the search warrant would be more accurate than your
3 recollection at this point in time?

4 A. Yes.

5 Q. And what other duties were you assigned in
6 connection with this case?

7 A. I was then asked to follow a BMW vehicle that was
8 being loaded onto a flatbed tow truck and was going to be
9 transported to the Fleet, Yavapai County Fleet, which is off
10 of Commerce Drive.

11 Q. Did you have an understanding as to whose BMW
12 vehicle this was?

13 A. Yes.

14 Q. Whose?

15 A. I was informed that it was Mr. DeMocker's.

16 Q. Okay. And Fleet, where is Fleet?

17 A. It is -- I believe the address is 1100 Commerce
18 Drive. It is the Yavapai County Fleet. It is where we take
19 all of our vehicles for servicing. It is where all of our
20 street paving-type vehicles, dump trucks, semi-trucks and so
21 on are kept for Yavapai County.

22 Q. For what reason was Mr. DeMocker's vehicle being
23 taken to Fleet?

24 A. So it could be processed after a search warrant
25 was obtained.

1 Q. When you say "processed," what do you mean by
2 that?

3 A. That we search the vehicle, swab it, gather any
4 evidence that may be evidence or could be considered evidence
5 in the case.

6 Q. And so you were part of the process of dealing
7 with Mr. DeMocker's vehicle out at the fleet location in
8 terms of executing a search warrant?

9 A. Yes.

10 Q. That would have been the first search warrant
11 executed in this case; is that correct?

12 A. To my knowledge, yes.

13 Q. Let me show you what has been admitted into
14 evidence as Exhibit No. 794.

15 Would you take a look at that.

16 A. (Whereupon, the witness reviews a document.)

17 Q. Do you recognize that?

18 A. This is the first time I have seen this document.

19 Q. Are there any documents that you were involved in
20 the preparation of that are attached to that?

21 A. That I was involved with, or that I did?

22 Q. That you were involved in the preparation of.

23 A. No.

24 Q. Okay. You didn't do any searching pursuant to
25 that search warrant?

1 A. Yes, I did.

2 Q. Were you identified as a searcher on some of the
3 documents?

4 A. Yes.

5 Q. So were you involved as the searcher or finder on
6 some of the documents attached to that search warrant?

7 A. Yes.

8 Q. Okay. And what did you search, Detective Surak?

9 A. It was a two --

10 MR. SEARS: Your Honor, if the witness needs
11 to look at this document, that would be fine.

12 MR. BUTNER: Thank you, Mr. Sears.

13 THE COURT: The record will show the detective
14 is looking at the Exhibit 714.

15 THE WITNESS: (Whereupon, the witness reviews
16 a document.)

17 I was involved in assisting with the
18 search of a 2007 BMW vehicle, and after that was finished,
19 also assisting in the search of 4701 -- sorry, 7485 Bridle
20 Path in Prescott.

21 BY MR. BUTNER:

22 Q. Let's talk about what you did with the BMW
23 vehicle, okay?

24 A. Okay.

25 Q. All right. You accompanied that vehicle out to

1 the fleet offices on Commerce Drive; right?

2 A. Yes.

3 Q. And for what purpose did you accompany it?

4 A. For chain of custody purposes.

5 Q. To make sure that the vehicle remained in the
6 custody of the sheriff's office while it was being
7 transported?

8 A. Yes.

9 Q. And then once you got there, were you part of the
10 search team that searched that vehicle?

11 A. Yes.

12 Q. And who was on that search team?

13 A. It was myself, Dawn Miller, and Sergeant Dan
14 Winslow and Mike Sechez.

15 Q. And actually the people that were noted on the
16 supplements that were attached on the search warrant return
17 were whom?

18 A. Myself, Sergeant Winslow and Dawn Miller.

19 Q. And what capacity did you perform in connection
20 with the warrant out there on the automobile?

21 A. I put on what is called a Tyvek suit and boots.
22 It is to make sure that you don't leave your own DNA behind.
23 And searching the interior of the vehicle as well as the
24 exterior of the vehicle.

25 Q. Were you the finder?

1 A. Yes.

2 Q. That is how you were identified on those
3 supplements; right?

4 A. Yes.

5 MR. BUTNER: And let me show you, first of
6 all, what has been marked as Exhibit 272.

7 May I approach, Judge?

8 THE COURT: Yes.

9 BY MR. BUTNER:

10 Q. Showing you Exhibit 272, do you recognize what is
11 depicted in that particular photograph?

12 A. Yes, I do.

13 Q. What is it?

14 A. It is the insurance card and the Arizona
15 registration information that was located in the glove box of
16 the 2007 BMW that we were searching.

17 Q. You found that stuff?

18 A. Yes.

19 Q. And you seized that as -- for what purpose?

20 A. It is known as what we call indicia to show
21 ownership.

22 Q. To show that Mr. DeMocker owned the vehicle, or at
23 least had possession of it?

24 A. Yes.

25 Q. And then let me show you what has been marked as

1 Exhibit No. 273.

2 Do you recognize what is depicted in that
3 particular photograph?

4 A. Yes.

5 Q. What is that?

6 A. It's what I call a head lamp.

7 Q. And where did you locate the head lamp?

8 A. The head lamp was located also in the glove box of
9 the 2007 BMW.

10 Q. Are you the person that seized it?

11 A. Yes.

12 Q. For what reason did you seize the head lamp?

13 A. It was a head lamp that could be used to be worn
14 on the head to be able to see in darkness. I was advised
15 that this incident had occurred the night before and that it
16 may have been dark outside when it had occurred, so it made
17 sense to seize a light that was in the vehicle.

18 Q. This is the kind of a headlight that you can wear
19 strapped onto your head?

20 A. Yes.

21 Q. So you could wear it while you were riding a bike
22 or running on a trail or something like that?

23 A. Yes.

24 Q. Where was it found?

25 A. In the glove box.

1 Q. Of the BMW?

2 A. Yes.

3 Q. And then let me show you what has been marked as
4 Exhibit 274. Show you what has been marked as Exhibit 274.

5 Do you recognize what that is?

6 A. Yes.

7 Q. What is it?

8 A. Garage door opener.

9 Q. Is it just any garage door opener or some garage
10 door opener that you know something about?

11 A. It is a garage door opener that I found in the
12 glove box of the 2007 BMW.

13 Q. You seized that pursuant to the search warrant?

14 A. Yes.

15 Q. And did you seize any other items while you were
16 there searching the BMW?

17 A. I would have to refer to the search warrant
18 supplement.

19 Q. Why don't you take a look at that supplement and
20 see if there were any other items that you personally seized.

21 A. (Whereupon, the witness reviews a document.)

22 I also seized some keys that were located
23 in the center console of the BMW, an unknown substance from
24 the rear bumper.

25 Q. Right.

1 A. And some sunglasses that were found in the
2 passenger sun visor.

3 Q. And for what reason did you seize the sunglasses?

4 A. I seized them because they were in the car, and
5 they may contain evidence on them.

6 Q. What kind of evidence did you think they might
7 have on them?

8 A. Maybe blood or other DNA.

9 Q. Okay. To your knowledge were those analyzed at a
10 later time?

11 A. To my knowledge, I don't know.

12 Q. But that is why you seized those; right?

13 A. Yes.

14 Q. And the unknown substance, where was that?

15 A. It was located on the bumper of the vehicle.

16 (Whereupon, the witness reviews a document.)

17 Yeah. It was an unknown substance found
18 on the rear bumper of the vehicle.

19 Q. How did you seize that unknown substance on the
20 bumper of the vehicle? Did you swab it?

21 A. It says "removed with" and I can't read the next
22 word. It says "pink," but I don't think that is the right
23 word, and it was placed onto a placard or a card.

24 Q. So it was somehow removed and put on a little
25 card?

1 A. Yes.

2 Q. So it could be analyzed?

3 A. Yes.

4 MR. BUTNER: Let me show you what has been
5 admitted into evidence as Exhibit 2821.

6 Before I do that, I move for the
7 admission of 272, 3 and 4 at this time.

8 MR. SEARS: No objection.

9 THE COURT: 272, 73 and 74 are admitted.

10 MR. BUTNER: Okay. Now showing you Exhibit
11 2821.

12 Q. Do you recognize that?

13 A. (Whereupon, the witness reviews a document.)

14 Yes.

15 Q. What is it?

16 A. It's the 2007 BMW that we searched on that day.

17 Q. Okay. And were you part of the search of
18 Mr. DeMocker's trunk on that day?

19 A. Yes.

20 Q. Let me show you what has been admitted into
21 evidence as Exhibit 2819.

22 Do you recognize what is depicted in that
23 particular photograph?

24 A. Yes.

25 Q. What is that?

1 A. It is the trunk of the 2007 BMW that we searched.

2 Q. When you searched the trunk of the BMW, is that
3 the way it appeared when you searched it?

4 A. Yes.

5 Q. Was there anything in there? Was there any kind
6 of a gym bag or anything like that in the trunk?

7 MR. SEARS: Leading.

8 THE COURT: Sustained.

9 BY MR. BUTNER:

10 Q. Is everything depicted in this photograph what was
11 in the trunk when you searched it?

12 A. Yes.

13 Q. Nothing is tucked around a corner or anything?

14 A. No.

15 Q. Did you find any kind of luggage items in the
16 trunk of the BMW?

17 MR. SEARS: Leading.

18 THE COURT: Overruled.

19 THE WITNESS: No.

20 BY MR. BUTNER:

21 Q. And then showing you what has been admitted into
22 evidence as Exhibit No. 2818.

23 Do you recognize that?

24 A. (Whereupon, the witness reviews a document.)

25 Yes.

1 Q. What is it?

2 A. It is a spare tire compartment of the 2007 BMW
3 that we searched.

4 Q. So you looked down in there, also?

5 A. Yes.

6 Q. For any other items of possible interest as
7 evidence?

8 A. Yes.

9 Q. Did you find anything?

10 A. No.

11 Q. That's the way it appeared on that date of July
12 3rd of 2008 when you were searching it?

13 A. Yes.

14 Q. And in regard to the picture of the back of the
15 BMW, are you able to point to the area where you removed the
16 little substance, if you will? Do you recall what portion of
17 the back bumper it was removed from?

18 A. (Whereupon, the witness reviews a document.)

19 Can't really see it in this picture, but
20 it was right in this area.

21 Q. Okay. Picture just isn't of sufficient definition
22 to see whatever it was that was there?

23 A. No.

24 Q. So how long did you search on the BMW out at
25 Commerce Drive?

1 A. Till about, I believe it was about 12:00, 12:15.

2 Q. 12:00 noon, 12:15?

3 A. Yes.

4 Q. And the keys that were seized by you, what were
5 they taken for?

6 A. We had been called by one of the other search
7 party that was searching, I believe it was the UBS building,
8 to try to locate any keys that were in the vehicle so that
9 they could unlock the door with the keys.

10 Q. So you were hoping to find keys to Mr. DeMocker's
11 office at UBS?

12 A. Yes.

13 Q. And did you seize those keys and give them to
14 someone so that they could use them?

15 A. Yes.

16 Q. Who did you give the keys to?

17 A. They were placed into an envelope and both sets
18 were given to Mike Sechez.

19 Q. Your understanding was he was taking them over to
20 the UBS office?

21 A. Yes.

22 Q. And then you said you went from there to the
23 Bridle Path residence; is that correct?

24 A. Yes.

25 Q. What were your duties out at Bridle Path?

1 A. I contacted Sergeant Huante once I got out to the
2 scene at Bridle Path, and I was instructed to inspect a fence
3 that ran along the eastern property line.

4 Q. About what time did you arrive at the Bridle Path
5 address? This would be 7485 Bridle Path; right?

6 A. Yes.

7 Q. About what time did you arrive out there?

8 A. It was about 12:45 in the afternoon.

9 Q. And what were you supposed to inspect the fence
10 for?

11 A. Any signs of blood.

12 Q. And in doing that, were you given any kinds of
13 special instructions about the premises there at Bridle Path?

14 A. Yes.

15 Q. What were those special instructions?

16 A. I was informed that there was a path that they had
17 marked with flags that were heading out the northeast. It
18 was like a gate kind of thing, looking thing. And they also
19 had another set of tracks that were coming over the fence
20 directly behind the house, and to be mindful of those areas
21 so not to disturb any tracks that were there.

22 Q. Were you aware of any tracks inside the fence at
23 Bridle Path?

24 MR. SEARS: Leading.

25 THE COURT: Sustained.

1 BY MR. BUTNER:

2 Q. In regard to the fence that you were inspecting,
3 if I understood what you just told me about, you were given
4 special instructions concerning flags marking tracks; is that
5 correct?

6 A. Yes.

7 Q. What were you supposed to do in connection with
8 these tracks?

9 A. Make sure not to disrupt them, not to step on
10 them.

11 Q. Were you shown where the tracks came along the
12 fence?

13 A. Yes.

14 Q. Where did they come along the fence?

15 A. One set of tracks was directly behind the
16 residence, and the other set of tracks headed northeast out
17 towards a, like a gate, but it was kind of "V" shaped.
18 Looked like a way to get through the fence.

19 Q. Okay. And just speaking first about the tracks
20 that went from the fence directly behind the residence. What
21 did you do as a precautionary measure in regard to those
22 tracks?

23 A. Make sure not to disrupt them, not to step on
24 them.

25 Q. Where were you being careful?

1 A. I walked around them.

2 Q. Did you see the tracks?

3 A. Yes.

4 Q. Where were they located?

5 A. There were some on the other side of the fence
6 that is known as the Deep Well Ranch or state land. There is
7 some state land out there, too. And there was one in
8 particular on the property of 7485 that was marked.

9 Q. And where was that located?

10 A. It was approximately five, ten feet from the
11 fence.

12 Q. Was that on the inside of the fence or the outside
13 of the fence?

14 A. On the inside.

15 Q. And when you were inspecting the fence, what did
16 you do in regard to those tracks?

17 A. Made sure not to disrupt them.

18 Q. Were you watching on the ground for the tracks?

19 A. Yes.

20 Q. And where did you inspect the fence? What I mean
21 by that is: Did you go all along the fence or specific
22 areas? Would you describe that inspection for us, please.

23 A. Yes. I started about the middle of -- or what I
24 considered the middle of the fence, and I went south on the
25 fence looking at -- and it was two fences. It was a field

1 fence on the inside, which was the side of the property that
2 was the 7485, and then there was a bumper fence on the other
3 side.

4 I went directly south, watching my steps,
5 looking up all strands of both fences and watching on both
6 sides of the fence to make sure that I didn't disturb any
7 footprints that I may or may not have seen. Went to the end
8 where the property ended, and another fence went to the west.
9 And then I went from there, and I inspected up and down the
10 fence all the way to the north till the property ended.

11 Q. And what were you looking for when you were
12 inspecting the fence?

13 A. I was looking for blood evidence.

14 Q. Did you find anything that you thought was of
15 significance?

16 A. No.

17 Q. Was any portion or portions of the fence removed?

18 A. Not by me.

19 Q. Did anybody else remove any portions?

20 A. I believe so, on a later date.

21 Q. You had nothing to do with that, though?

22 A. No.

23 Q. You found no indications of blood evidence along
24 that fence?

25 A. No.

1 Q. And in addition to inspecting the fence, what did
2 you do?

3 A. I went inside, and I once I was done, I went into
4 the residence and was a scribe when other detectives were
5 collecting items of evidence.

6 Q. So you took notes, so to speak, made note of where
7 the evidence was collected?

8 A. Yes.

9 Q. You were not involved actually in doing the
10 searching or the collecting of the evidence?

11 A. No.

12 Q. How long were you there acting as a scribe for the
13 search of the Bridle Path residence?

14 A. I only scribed for four or five items, I believe.

15 Q. Do you recall what those items were?

16 A. I believe it was a cell phone, a box of bank
17 paperwork, a SD card or a memory card and a camera, or it
18 might have been a thumb drive, sorry. Not an SD card, a
19 thumb drive.

20 Q. And a camera?

21 A. Yes. There might have been one more item, but I
22 don't remember what that is.

23 Q. That would have been on the search warrant
24 supplements that were attached to the return of the search
25 warrant?

1 A. Yes.

2 Q. And after acting as a scribe, did you have
3 additional involvement in the search there at the Bridle Path
4 residence?

5 A. Yes.

6 Q. What was that?

7 A. I was asked to go into the garage and look around
8 the garage for any items that may be considered a weapon. I
9 was also asked to search part of the property that looked to
10 me like a horse barn or horse stable area of the property.

11 Q. Let's talk about -- first of all, let's talk about
12 your search of the garage, okay?

13 A. Okay.

14 Q. Now this garage that you looked around in, as you
15 put it, looking for a weapon, which garage is this? Is this
16 the garage -- do you realize that there were more than one
17 garage there?

18 A. Yes.

19 Q. Which garage did you search?

20 A. I searched a garage that was attached to the main
21 house, or what I considered the main house.

22 Q. And did you find anything of significance in that
23 garage?

24 A. No.

25 Q. And then you indicated that you searched the horse

1 barn?

2 A. Yes.

3 Q. What were you looking for in the horse barn?

4 A. I was asked to look for anything that might look
5 like a weapon.

6 Q. And did you find anything that looked like a
7 weapon?

8 A. No.

9 Q. Had you viewed the injuries to the victim already?

10 A. Yes.

11 Q. When you were searching?

12 A. Yes.

13 Q. What was your recollection as to what the injuries
14 were to the victim as you saw them?

15 A. Looked to me like the victim had been struck in
16 the head several times by a straight object, or I don't know,
17 linear.

18 Q. Okay. And so what were you looking for when you
19 were searching for a weapon?

20 A. Anything that could have made that kind of injury.

21 Q. Were you looking for something that was a bloody
22 object?

23 A. Yes.

24 Q. And when you went out to the horse barn, did you
25 find any?

1 A. No.

2 Q. Did you see any kind of instrument that you
3 thought could be used to inflict those kinds of injuries?

4 A. No.

5 Q. What did you have in mind when you were out there
6 looking?

7 A. Anything that was straight and maybe kind of small
8 in circumference, maybe round or linear.

9 Q. Did you find any objects out there like that?

10 A. Not that I saw, no.

11 Q. What did you see out at the horse barn?

12 A. There were several items. I saw there was some
13 lumber out there, lawnmower. Most everything in there had
14 about two inches of dust on it.

15 Q. And did you see any kinds of objects that had been
16 recently moved or used?

17 A. No.

18 MR. SEARS: Foundation. Speculation.

19 THE COURT: Overruled. He answered.

20 BY MR. BUTNER:

21 Q. After searching in that particular area, did you
22 go someplace else?

23 A. I went back in the house to see what else needed
24 to be done and was told that they would be doing the autopsy
25 soon.

1 Q. Okay. And did you go and attend the autopsy?

2 A. Yes.

3 Q. When you attended the autopsy, did you gather any
4 information at the autopsy as to what types of objects you
5 should be searching for?

6 A. Yes.

7 Q. What was your understanding as to what you should
8 be searching for?

9 A. I believe as the autopsy was going on, one of the
10 detectives in the room said --

11 Q. Wait, wait. That is hearsay, what some other
12 detective says, okay. I asked you what your understanding
13 was as to what kind of object you should be searching for.

14 Do you remember that question?

15 A. Yes.

16 Q. What did you understand you should be searching
17 for?

18 A. A golf club.

19 Q. And so did you do any additional searching in
20 regard to looking for a golf club?

21 A. Yes.

22 Q. Where did you go?

23 A. We went to Mr. DeMocker's residence off of Alpine
24 Meadows.

25 Q. When you say "we," who are you talking about?

1 A. I was me and several other detectives.

2 Q. And approximately what time did you arrive at
3 Mr. DeMocker's residence?

4 A. I don't remember the exact time. I remember it
5 was, I believe, around 5:30 or six o'clock in the evening.

6 Q. And what was your -- what were your duties in
7 connection with the search of Mr. DeMocker's residence?

8 A. We were looking for --

9 Q. What were your duties in connection with the
10 search of Mr. DeMocker's residence?

11 A. Looking for golf clubs and shoes.

12 Q. Okay. And what did you do?

13 A. Searched the garage for golf clubs and shoes.

14 Q. And did you find any?

15 A. We found golf clubs.

16 Q. And what did you do in connection with those golf
17 clubs?

18 A. Collected them as evidence. I did not personally,
19 but --

20 Q. And in regard to shoes, were any shoes collected
21 at that time?

22 A. Yes.

23 Q. Did you have anything to do with the collection of
24 shoes at Mr. DeMocker's residence at that time?

25 A. Yes.

1 Q. Where did you collect shoes?

2 A. It was in the master bedroom closet.

3 Q. Okay. Let me show you -- let me show you what has
4 been admitted into evidence as Exhibit 796.

5 Would you take a look at that.

6 A. (Whereupon, the witness reviews a document.)

7 Q. Were you involved in the preparation of anything
8 in connection with that particular Exhibit 796?

9 A. You say "preparation." Do you mean in assisting
10 in writing it or assisting in serving it or both?

11 Q. Maybe I will just back up.

12 You were there at the Alpine Meadows
13 residence; right?

14 A. Yes.

15 Q. 1716 Alpine Meadows No. 1405?

16 A. Yes.

17 Q. Whose residence was that?

18 A. Mr. DeMocker's.

19 Q. And you indicated in your earlier testimony you
20 arrived about 5:30 or six o'clock?

21 A. Yes.

22 Q. What did you do in connection with the execution
23 of that search warrant?

24 A. Searched the residence.

25 Q. What portion or portions of the residence did you

1 search?

2 A. The garage and the master bedroom, master bath and
3 closet. Sorry. And also, I believe, there were two other
4 adjacent rooms that were also searched.

5 Q. And did you seize any items in connection with
6 your search?

7 A. Yes.

8 Q. What did you seize?

9 A. I seized several pairs of shoes.

10 Q. How many to be precise?

11 A. I am going to refer to the search warrant
12 supplements.

13 Q. You may.

14 A. (Whereupon, the witness reviews a document.)

15 Six pairs.

16 Q. Where did you seize those shoes?

17 A. They were all located in the master bedroom
18 closet.

19 Q. You are identified by a particular letter and
20 number in connection with the search; is that correct?

21 A. Yes.

22 Q. What is that designation?

23 A. C-31.

24 Q. And you are also designated as the finder; is that
25 right?

1 A. Yes.

2 Q. I am going to put Exhibit 796 on the overhead now.

3 Okay.

4 Now, this is designated as search warrant
5 supplement; correct?

6 A. Yes.

7 Q. And we have already had some testimony about
8 supplements, but would you tell us basically what a search
9 warrant supplement is?

10 A. When we are conducting a search, we are searching
11 through a residence or car, whatever we are searching, we are
12 finding items of evidentiary value, what might be evidentiary
13 value. As we collect them, we give them a number. We write
14 down what it is we are collecting and where it was found, and
15 then who the finder was and what time that particular item
16 was found by the finder.

17 Q. And then in this particular supplement, right down
18 here at the bottom, it says Surak C-31?

19 A. Yes.

20 Q. That is you; correct?

21 A. Yes.

22 Q. Which items did you find in connection with this
23 particular search warrant and this particular supplement?

24 A. By number, I found Item 700, 701, 702, 703, 704,
25 705.

1 Q. So these right here; 700, 701, 702, 703, 704 and
2 705; right?

3 A. Yes.

4 Q. And what was your understanding as to why you were
5 looking for shoes?

6 A. Is tracks that were found leading to the residence
7 and away from the residence at 7485 Bridle Path.

8 Q. Let's start with -- let's take a look at Exhibit
9 No. 380. Showing you what has been marked as Exhibit
10 No. 380.

11 Do you recognize what is depicted in that
12 particular exhibit?

13 A. (Whereupon, the witness reviews a document.)

14 Yes.

15 Q. What is it?

16 A. A pair of tennis shoes.

17 Q. And it is a photograph of the tennis shoes; right?

18 A. Yes.

19 Q. And it is a two-page document.

20 A. Yes.

21 Q. Is it -- what is it a photograph of, the
22 photographs?

23 A. The photograph is a photograph of the tops of the
24 shoes, tennis shoes, if you are going to put them on your
25 feet, and the second photo is a photo of the bottom or the

1 tread of the shoes.

2 Q. And do you recognize Exhibit 380 as shoes that you
3 have seen before?

4 A. Yes.

5 Q. Where did you see them?

6 A. I found them at Mr. DeMocker's residence.

7 Q. Pursuant to that second search warrant?

8 A. Yes.

9 MR. BUTNER: I would move for admission of
10 Exhibit 380.

11 MR. SEARS: No objection.

12 THE COURT: 380 is admitted.

13 BY MR. BUTNER:

14 Q. And then let me show you what has been marked as
15 Exhibit 381.

16 Would you take a look at that particular
17 document.

18 A. (Whereupon, the witness reviews a document.)

19 Q. Do you recognize what is depicted in that?

20 A. Yes.

21 Q. What is it?

22 A. A picture of tennis shoes. Again, first picture
23 is a picture of the top of the shoes, like you are going to
24 put them on, and the second picture is the tread pattern of
25 those shoes.

1 Q. And do you recognize that particular pair of
2 shoes?

3 A. Yes.

4 Q. How is it you recognize those?

5 A. These are another pair of shoes that I collected
6 at Mr. DeMocker's residence pursuant to the second search
7 warrant.

8 MR. BUTNER: I would move for admission of
9 Exhibit 381.

10 MR. SEARS: Can I have just a moment, Your
11 Honor?

12 THE COURT: Yes.

13 MR. SEARS: No objection.

14 THE COURT: 381 is admitted.

15 BY MR. BUTNER:

16 Q. Let me show you what has been marked as Exhibit
17 No. 382.

18 Do you recognize what is depicted in that
19 particular exhibit?

20 A. Yes.

21 Q. What is that?

22 A. It is a picture of a pair of shoes. Again, first
23 picture is a view of the shoes from the top, and the second
24 picture is a picture of the tread pattern of the shoes.

25 Q. Do you recognize that particular pair of shoes?

1 A. Yes.

2 Q. How is it that you recognize those?

3 A. These are another pair of shoes that I found
4 during the search warrant, second search warrant at
5 Mr. DeMocker's residence.

6 MR. BUTNER: I would move for the admission of
7 Exhibit 382.

8 MR. SEARS: One question on voir dire?

9 THE COURT: Okay.

10 VOIR DIRE EXAMINATION

11 BY MR. SEARS:

12 Q. Detective, at the time you were back at
13 Mr. DeMocker's residence on the evening of July 3, 2008, were
14 you personally aware that other law enforcement personnel had
15 found the shoe print impressions that you told us about
16 earlier? Did you know that?

17 A. Yes.

18 Q. So it seemed logical that you would go back and
19 look for shoes; correct?

20 A. Yes.

21 MR. SEARS: No objection.

22 THE COURT: 382 is admitted.

23 DIRECT EXAMINATION RESUMED

24 BY MR. BUTNER:

25 Q. Let me show you what has been marked as Exhibit

1 383.

2 Do you recognize what is depicted in that
3 particular exhibit?

4 A. Yes.

5 Q. What is that?

6 A. It is a picture of a pair of shoes, again the
7 first picture is a picture of the top of the shoes, and the
8 second picture is a picture of the bottom, the tread pattern
9 of the shoes.

10 Q. And how is it that you recognize those shoes?

11 A. It was another pair of shoes that I found during
12 the execution of the second search warrant of Mr. DeMocker's
13 residence.

14 Q. And you found those in his -- where?

15 A. One was found in the closet, and the other was
16 found holding the door open to the bathroom, or actually, I
17 think it was the master bedroom.

18 MR. BUTNER: Okay. I would move for the
19 admission of Exhibit 383.

20 MR. SEARS: No objection.

21 THE COURT: 383 is admitted.

22 BY MR. BUTNER:

23 Q. Let me show you what has been marked as Exhibit
24 384.

25 Do you recognize what is depicted in that

1 particular exhibit?

2 A. Yes.

3 Q. What is it?

4 A. It is a picture of a pair of shoes. Again, first
5 picture is the top of the shoes. Second picture is the tread
6 pattern or the bottom of the shoes.

7 Q. And how is it that you recognize that pair of
8 shoes?

9 A. Another pair of shoes that were -- I found in the
10 closet of Mr. DeMocker during the second search warrant.

11 MR. BUTNER: I would move for the admission of
12 Exhibit 384.

13 MR. SEARS: No objection.

14 THE COURT: 384 is admitted.

15 BY MR. BUTNER:

16 Q. And then showing you what has been marked as
17 Exhibit 385.

18 Do you recognize what is depicted in that
19 particular exhibit?

20 A. Yes.

21 Q. What is that, sir?

22 A. A picture of a pair of shoes. Again, the first
23 picture is a picture from the top. The second picture is a
24 picture of the tread pattern.

25 Q. And how is it that you recognize that particular

1 pair of shoes?

2 A. It was another pair of shoes that I found during
3 the service of the second search warrant in Mr. DeMocker's
4 closet.

5 MR. BUTNER: Okay. I would move for the
6 admission of Exhibit 385.

7 MR. SEARS: No objection.

8 THE COURT: 385 is admitted.

9 BY MR. BUTNER:

10 Q. Now, I am going to show you what is already
11 admitted into evidence as Exhibit 3265.

12 And I would ask that you -- first of all,
13 do you recognize the box?

14 A. Yes.

15 Q. How is it that you recognize the box?

16 A. The box that these shoes were put into during the
17 service of the second search warrant.

18 Q. Which shoes were put into the box during the
19 service of the second search warrant?

20 A. The item -- well, YCSO Evidence Item No. 701.

21 Q. And are you the person that put them there?

22 A. No.

23 Q. Who put them in there, do you know?

24 A. I gave them to one of our evidence techs. I don't
25 remember which one at this time.

1 Q. And would you take a look at the shoes that are in
2 that box.

3 A. (Whereupon, the witness reviews an item.)

4 Q. Do you recognize the shoes?

5 A. Yes.

6 Q. How is it that you recognize the shoes?

7 A. These are shoes that I found during the execution
8 of the second search warrant at Mr. DeMocker's residence in
9 the closet.

10 Q. And which evidence item are they as referenced on
11 your search warrant?

12 A. Item No. 701.

13 Q. So, you are the person that seized those
14 particular shoes on July 3rd of the year 2008 from
15 Mr. DeMocker's closet?

16 A. Yes.

17 Q. And those are the exact same shoes that you
18 seized?

19 A. Yes.

20 MR. BUTNER: I would move that these be
21 admitted into evidence at this time, Judge, as the exact same
22 shoes, Exhibit 701 on the search warrant supplement. They
23 are identified as the Sportiva shoes.

24 MR. SEARS: Your Honor, I thought the practice
25 was not to admit tangible items, but to use photographs in

1 conformity with the Court's practices and rulings.

2 THE COURT: I did explain that those would not
3 be part of the permanent record of the case.

4 Mr. Butner?

5 MR. BUTNER: Judge, we do have some
6 photographs already admitted of those shoes. I guess I am
7 just asked asking they be admitted for demonstrative purposes
8 as the exact shoes that were seized from Mr. DeMocker's
9 closet.

10 MR. SEARS: That was already done yesterday
11 with Mr. Gilkerson.

12 MR. BUTNER: Actually, it wasn't done
13 yesterday with either Mr. Gilkerson or Mr. Day. If the Court
14 will recall, the Court admitted those shoes for demonstrative
15 purposes during the testimony of Mr. Day as an example of the
16 Raja shoes that were shipped to Mr. DeMocker.

17 But with the additional testimony of this
18 witness, we now have established that they actually were the
19 shoes taken from Mr. DeMocker's closet, and I would ask that
20 they be admitted for demonstrative purposes on that basis.

21 MR. SEARS: I don't know how we would admit
22 something twice for two different demonstrative purposes.
23 They are already admitted.

24 THE COURT: They are admitted for
25 demonstrative purposes, and that is Exhibit 701, and they are

1 admitted.

2 MR. BUTNER: It is actually Exhibit 381.

3 THE COURT: 381.

4 MR. BUTNER: I believe so. Take a look at the
5 photograph.

6 Photograph -- sorry, to be clear. The
7 Photograph 381, and then for demonstrative purposes Exhibit
8 3265.

9 THE COURT: 3265 is the demonstrative exhibit.

10 Mr. Butner, would this be a good place
11 for a break at this time?

12 MR. BUTNER: I think would be.

13 THE COURT: I want to talk a bit about this, a
14 legal question. So let's take a recess.

15 Detective, the rule of exclusion of
16 witnesses has been invoked. You know what that means?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Follow that, of course.

19 And, ladies and gentlemen, please be
20 ready to resume in 20 minutes, 10 till. Remember the
21 admonition. I will ask the parties to remain.

22 (Whereupon, the jury exits the courtroom.)

23 (Whereupon, a discussion was held in
24 open court out of the presence of the jury
25 that was reported but not contained herein.)

1 (Whereupon, the jury enters the courtroom.)

2 THE COURT: The record will show the presence
3 accepts of the defendant, the attorneys. The jury is
4 present.

5 The witness is on the stand and has
6 previously been sworn.

7 Mr. Butner.

8 MR. BUTNER: Thanks, Judge.

9 We were just discussing, Your Honor, this
10 particular Exhibit 3265, these La Sportiva shoes. And they
11 had previously been admitted for demonstrative purpose in
12 regard to are these the type of Raja shoes that was sent to
13 Mr. DeMocker by the La Sportiva company pursuant to the
14 testimony of Mr. Day.

15 But I wanted to further qualify their
16 admission under demonstrative purposes, that these actually
17 were the shoes that Mr. DeMocker received that were found in
18 his closet, the La Sportiva Raja, and that is why I asked
19 that they be admitted for demonstrative purposes again, so to
20 speak, with that further qualification that these are the
21 actual Raja shoes that were found in his closet.

22 THE COURT: Any further record on that,
23 Mr. Sears?

24 MR. SEARS: Your Honor, as long as I
25 understand what the State is saying, that those are the shoes

1 that Detective Surak took out of Mr. DeMocker's closet, we
2 know that. The question whether those are the same shoes he
3 wears, that is another questions.

4 I have no objection to that additional
5 qualification that these are simply the shoes that were taken
6 out of his closet. We all understand that.

7 THE COURT: Okay. Admitted for demonstrative
8 purposes as described by counsel, Mr. Butner.

9 MR. BUTNER: Thank you, Judge.

10 THE COURT: And Mr. Sears.

11 MR. SEARS: Thank you.

12 BY MR. BUTNER:

13 Q. Okay. You did the searching up in the master
14 bath. You called it the master bath closet, I think; right?

15 A. Yeah. The closet was -- you go into the master
16 bedroom. The master bathroom is off to the right, and then
17 the closet is in there.

18 Q. And going back to when you were down in the garage
19 area, some golf clubs were seized down there in the garage
20 area; is that correct?

21 A. Yes.

22 Q. You weren't the person that seized them, though?

23 A. No.

24 Q. Do you remember who did?

25 A. No.

1 Q. Do you know who C-38 is?

2 A. Yes.

3 Q. Who is that?

4 A. Deputy Brown.

5 Q. And when you were searching in the garage area,

6 you were searching there with Detective Brown?

7 A. Yes.

8 Q. Do you recall where Mr. DeMocker was located when

9 you were searching in the garage area?

10 A. I didn't know at the time, no.

11 Q. So you don't recall where he was located?

12 A. No.

13 Q. Okay. You were involved in the search at the

14 Alpine Meadows residence. Did you do any additional

15 searching in connection with this case?

16 A. Yes.

17 Q. Where did you search?

18 A. The following weekend, which I believe was the

19 6th, I am not positive about the date, but it was that

20 following Saturday.

21 Q. Well, if Wednesday was the 3rd, Thursday is the
22 4th, Friday is the 5th, Saturday would have been the 6th of
23 July of the year 2008; correct?

24 A. Yes.

25 Q. That is the following weekend you are speaking

1 about?

2 A. Yes.

3 Q. What did you do on July 6th of 2008?

4 A. I met with Detective Kennedy, Sergeant Huante, and
5 several members of the Back Country Search and Rescue unit at
6 the end of Glenshandra Drive.

7 Q. What did you do when you met with those people
8 there that day?

9 A. We were given instructions by Sergeant Huante that
10 we were going to do several line searches of the area behind
11 7485 Bridle Path, which is known as the Deep Well Ranch.

12 Q. Sorry. It is known as what?

13 A. The Deep Well Ranch.

14 Q. So, is that what you did?

15 A. Yes.

16 Q. Would you describe how you did these line
17 searches, please.

18 A. Everybody would get on a line, or an imaginary
19 line, standing next to each other side by side, stretch out
20 arm's length from the person standing next to you on either
21 side, and you walk and looked on the ground.

22 Q. Okay. And these line searches, were they
23 perpendicular to the fence along the Bridle Path property or
24 parallel?

25 A. Both.

1 Q. Where did you start with the line searches?

2 A. They started at the trailhead, which was there at
3 the end of Glenshandra Drive.

4 Q. How many people were involved in the line that
5 conducted the searches?

6 A. I want to say a half dozen.

7 Q. So when you say half dozen, you mean six people?

8 A. There may have been more. I don't remember
9 exactly how many people were there.

10 Q. And how long was the line, approximately?

11 A. I would say approximately 25 yards, maybe more.

12 Q. And what governed how long the line was?

13 A. How many people were there.

14 Q. Okay. And were they at fingertip to fingertip, or
15 were they grasping hands, or just within eye shot? How far
16 apart were the individual people in the line search?

17 A. At arm's reach, fingertip to fingertip.

18 Q. Would you describe for us the complete process of
19 this line searching.

20 A. Stand in a line. You stand with your arms out.
21 The person next to you, once you have established that, they
22 would start to walk and take a step. Each person would be
23 looking on the ground back and forth in their area, you know,
24 how far they could reach, and walking a straight line down,
25 keeping -- trying to keep in using peripheral or looking at

1 the people next to you, trying to stay in a line.

2 Q. And what was the country like that you were
3 searching?

4 A. It was open ranch land. Lots of trees, bushes,
5 rocks.

6 Q. And so was it hard to do this line search?

7 A. Depends on how you define "hard."

8 Q. Did you encounter difficulties as a result of the
9 shrubbery and trees and so forth?

10 A. Yes.

11 Q. Would you describe that for us, how you dealt with
12 that?

13 A. Search through the bush as good as you can, move
14 the branches out of the way, look underneath of it. If you
15 could, try to walk through it. Some of the scrub oak out
16 there can get ahold of you pretty good.

17 Q. What do you mean by that?

18 A. Scratch you up.

19 Q. So what would you do?

20 A. Try to move it the best you could, so it wouldn't
21 scratch you.

22 Q. Okay. And how many lines walked? By that I mean,
23 how many times did the line walk in conducting these
24 searches?

25 A. I know they went -- we went from the trailhead

1 south to about the 7485 Bridle Path, and then they went --

2 Q. Did you go to the south border of 7485 Bridle
3 Path?

4 A. Yes.

5 Q. And when you were doing that in a line, was that
6 perpendicular to the fence that bordered the Deep Well Ranch
7 property?

8 A. It was from -- we were going from west to east or
9 east to west and walking directly south.

10 Q. So did your line extend out perpendicular from the
11 bordering fence along Bridle Path, between Bridle Path and
12 the Deep Well Ranch?

13 A. Yes.

14 Q. And how many times did you do that?

15 A. Well, they also went from a wash that was
16 approximately two-, three hundred yards to the east of the
17 Bridle Path address. They walked from there back to the
18 Bridle Path address, as well. Myself and Detective Kennedy
19 also did other searches outside of the line search.

20 Q. Okay. When you say walked from a wash, would you
21 explain that to us, please. We are going to try and find a
22 map that we can use here.

23 A. There is an area out there where they had located
24 some tracks that was near an area where water runs through.
25 I call it a wash. Could be a creek. You could tell that

1 water runs through there. It looked like there were also
2 other paths going off of that particular area, and it was
3 about, I would say, two-, three hundred yards to the east of
4 the 7485 address on the Deep Well Ranch property.

5 Q. Is this the area where Carol Kennedy had gone out
6 to run to?

7 A. Yes.

8 MR. SEARS: Leading. Foundation.
9 Speculation.

10 THE COURT: Sustained as to foundation.

11 BY MR. BUTNER:

12 Q. You testified that this is an area where they had
13 located tracks; is that correct?

14 A. Yes.

15 Q. Whose tracks had they located out there?

16 MR. SEARS: Foundation. Speculation.

17 THE COURT: Mr. Butner, do you have a legal
18 response?

19 MR. BUTNER: Judge, I am just asking for the
20 witness's understanding as to whose tracks were located
21 there.

22 THE COURT: His understanding only. You are
23 not saying it is truthful information he is relying on, it is
24 what his understanding was.

25 MR. BUTNER: Right, in doing this search.

1 That's what we have been talking about.

2 MR. SEARS: Calls for hearsay. He doesn't
3 have any personal knowledge.

4 MR. BUTNER: It is not offered for the truth
5 of the matter asserted, Judge.

6 THE COURT: It cannot be asserted for the
7 truth. It is asked only as to what his understanding and why
8 he was doing what he was doing?

9 MR. BUTNER: Exactly.

10 THE COURT: Overruled.

11 THE WITNESS: My understanding was that the
12 tracks were of Miss Kennedy, and the other tracks were of a
13 possible suspect at that time.

14 BY MR. BUTNER:

15 Q. So your understanding is there were two sets of
16 tracks out there, and you went out to search in that area?

17 A. Yes.

18 Q. And the line formed out in that area also?

19 A. Yes.

20 Q. And tell us how the line searched from that area
21 where these tracks were located?

22 A. They lined up north to south. Again, end to end,
23 arm stretched out, fingertip to fingertip. And again they
24 walk, step at a time, searching the ground of the area that
25 they were walking to check for anything of evidentiary value.

1 Q. How long did you spend out there that Saturday
2 searching?

3 A. I don't know the exact time, but I know we were
4 out there, I believe, at least until almost noon or close to
5 noon.

6 Q. Okay. So you are out there searching at least
7 until noon that day, and did you find anything?

8 A. Yes.

9 Q. What did you find?

10 A. I found a piece of paper with some -- it looked
11 like a computer generated piece of paper, had some writing
12 reference some sort of car care.

13 Q. So some sort of a receipt?

14 A. Yeah.

15 Q. And where did you find that?

16 A. It was on the Deep Well Ranch property.

17 Q. And what did you do with that piece of paper?

18 A. I had my GPS with me. I marked it on my GPS,
19 wrote down the GPS location, and we pictured it and collected
20 it.

21 Q. Okay. And was that piece of paper investigated
22 further?

23 A. I don't know.

24 Q. And then did you find anything else out there that
25 you thought might be significant?

1 A. Yes.

2 Q. What did you find?

3 A. A piece of rebar.

4 Q. Where did you find that?

5 A. It was out on the Deep Well Ranch property to the
6 northeast of 7485 Bridle Path.

7 Q. And what did you do with that piece of rebar?

8 A. Again, I had my GPS. I GPSed it. Wrote down the
9 location and pictured it and collected it.

10 Q. And to your knowledge was that investigated any
11 further?

12 A. I don't know.

13 Q. You don't know, because you were just part of this
14 search team?

15 A. Yes.

16 MR. BUTNER: Let me show you what has been
17 marked as Exhibit 454. It is disk "N," Image 0002.

18 MR. SEARS: What is the exhibit number?

19 MR. BUTNER: 454.

20 Q. Showing you what has been marked as Exhibit 454,
21 do you recognize that?

22 A. (Whereupon, the witness reviews a document.)

23 Yes.

24 Q. What is it?

25 A. It is the piece of paper that I found while doing

1 the line search.

2 Q. And what else is there, if anything?

3 A. Scrub oak.

4 Q. Is that a photograph that you had taken?

5 A. Yes.

6 Q. Does it depict where the piece of paper was
7 located when you discovered it?

8 A. Yes.

9 MR. BUTNER: I move for admission of Exhibit
10 454.

11 MR. SEARS: Question or two, Your Honor?

12 THE COURT: Okay.

13 VOIR DIRE EXAMINATION

14 BY MR. SEARS:

15 Q. Detective, can you tell us with anymore
16 specificity where this piece of paper was in relation to the
17 fence that separated the Bridle Path property from Deep Well
18 Ranch?

19 A. This was to the northeast of the Bridle Path
20 address.

21 Q. Okay. Was it as far up as a line that would run
22 east-west from the trailhead at the Glenshandra gate?

23 A. I don't understand your question, sorry.

24 Q. How far north from the northeast corner of the
25 property was it?

1 A. I would have to say 15, 25, maybe 30 yards.

2 Q. So it wasn't directly behind the Bridle Path
3 property. It was behind the property to the north of the
4 Bridle Path address. Is that fair to say?

5 A. Yes.

6 MR. SEARS: No objection.

7 THE COURT: 454 is admitted.

8 DIRECT EXAMINATION RESUMED

9 BY MR. BUTNER:

10 Q. Relative to the picture, or relative to the piece
11 of paper, where was the rebar located?

12 A. It was west of where I found the piece of paper.
13 It was closer to the residence that was directly north of the
14 7485 address, and closer to the 7485 residence. It was
15 approximately five to ten yards east of the residence, just
16 north of the 7485 address.

17 Q. Okay.

18 A. I can show you better on the map. Sorry.

19 MR. BUTNER: I am going to get a map here.

20 Q. Let's try with this particular exhibit admitted
21 into evidence as Exhibit 2647. I think right there would be
22 good for right now.

23 This is a laser pointer right here. Just
24 press that little button.

25 Looking at 2647, could you point to,

1 first of all, the area where the paper was located.

2 A. (Witness indicates.) This area.

3 Q. Okay. Is the wash that you were talking about
4 depicted on that particular map?

5 A. Yes.

6 Q. Where is the wash located?

7 A. This right here.

8 Q. And do you recognize the Bridle Path residence on
9 that map?

10 A. Yes.

11 Q. Where is it?

12 A. Right there.

13 Q. And so your line search went out to where?

14 A. This right here.

15 Q. Went out beyond that wash area?

16 A. Yeah. We started right about along this tree line
17 right there and walked this way. When we first started, we
18 started here, lined up that way, and walked this way out to
19 about over here. And then when we did the search from the
20 wash, we started out here.

21 MR. BUTNER: Okay. The jury can't see it. We
22 will have to put it up on the easel.

23 If we could put it against the wall
24 there, Phil.

25 THE BAILIFF: How is that?

1 BY MR. BUTNER:

2 Q. Detective Surak, you can step down with your
3 pointer and show us where you did your searching, okay?

4 A. When we first started, we started up here.

5 Q. That is the Glenshandra trailhead; right?

6 A. Yes.

7 Q. How far out did your line extend from there?

8 A. I would say out to about here.

9 Q. Okay. Show us the path that the line walked,
10 please.

11 A. We walked down this way, all the way to right in
12 here.

13 Q. Okay. And then did you turn and walk back?

14 A. I don't remember.

15 Q. How many times did the line walk?

16 A. I remember two. Two times.

17 Q. And then where else did you search?

18 A. We lined up here along this tree line, and walked
19 this way all the way to the fence. Me and Detective Kennedy
20 searched out in this area out here. And me, myself, I --
21 when we first came across the fence, I searched this area
22 right here.

23 Q. And did you find anything of significance in those
24 areas that you just spoke about?

25 A. Other than the paper and the rebar?

1 Q. Where was the paper found again?

2 A. The paper was found in this area here, and the
3 rebar I found right about in here.

4 Q. Okay. And those are both taken into evidence?

5 A. Yes.

6 Q. And you GPSed the locations where you found those
7 items?

8 A. Yes.

9 Q. Have you ever been advised that either of those
10 items were determined to be of evidentiary value?

11 A. No.

12 Q. When you submitted them into evidence, was it for
13 the purpose of having them analyzed by a crime lab?

14 A. Yes.

15 Q. And did you do any other searching in connection
16 with this case, other than what you just described for us?

17 A. Yes.

18 Q. What else did you search?

19 A. I don't remember what day it was. It was the
20 following week. I believe it might have been on the 9th or
21 the 10th. Another search warrant was written. Actually, let
22 me go back.

23 That day, they already had another search
24 warrant wrote, and we were searching the residence at 7485
25 address.

1 Q. The what?

2 A. 7485 Bridle Path address.

3 Q. Right.

4 A. Sergeant Huante and Detective Brown were, I
5 believe, there. When I -- when we were done with the search,
6 myself and Detective Kennedy went back to the Bridle Path
7 address, and I was instructed that a black X-3 BMW was going
8 to be towed that was located in the garage that was attached
9 to the house. It was going to be towed to our impound yard
10 and subsequently processed or searched.

11 Q. And you handled the towing of the BMW and then the
12 processing of that?

13 A. Yes.

14 Q. Any other searching?

15 A. We also took the GPS out of the car, the BMW car
16 after we did the X-3 SUV.

17 Q. You removed the GPS unit from Mr. DeMocker's BMW?

18 A. Yes.

19 Q. And what was the reason that that was removed?

20 A. They thought that we could send it off and have it
21 analyzed to see if the GPS unit could show us where the
22 vehicle had been.

23 Q. Do you know what the result of that was in terms
24 of analysis?

25 A. No.

1 Q. You weren't part of the case at that point in
2 time?

3 A. No.

4 Q. Anything further that you did?

5 A. Not that I can recall.

6 Q. Okay. Let me show you what has been admitted into
7 evidence as Exhibit 2567.

8 Theresa Kennedy was with you when you
9 were searching; right?

10 A. Yes.

11 Q. Was she there with you when you were searching for
12 the rebar?

13 A. When I found it?

14 Q. Yes.

15 A. Yes.

16 Q. Is that a photograph of the rebar that was found?

17 A. Yes.

18 MR. BUTNER: I have no further questions of
19 this witness at this time.

20 THE COURT: Thank you, Mr. Butner.

21 Mr. Sears.

22 MR. SEARS: Thank you, Your Honor.

23 If I could just have a minute here.

24 THE COURT: Of course.

25 MR. SEARS: Thank you.

1

CROSS-EXAMINATION

2

BY MR. SEARS:

3

Q. Good morning.

4

A. Good morning.

5

Q. Good to see you again.

6

7

You remember that we had a little
interview in the sheriff's office in February of this year
talking about this case?

8

A. Yes.

9

10

Q. Have you had that chance to look at a transcript
of our interview before your appearance here today?

11

A. Yes.

12

13

Q. And when did you do that?

14

A. Last week, the week before that, the week before
that, three weeks ago, and the first day I got it. I forget
when that was, though.

15

Q. So you visited it more than once?

16

A. Yes.

17

Q. And you have had a chance to read it through
completely?

18

A. Yes.

19

Q. You remember telling me in February of this year
that you actually did see Mr. DeMocker on July 3, 2008, when
you were there for the search that evening of his residence
here in Prescott; right?

20

21

22

23

24

25

1 A. Yes.

2 Q. Okay. And you saw Mr. DeMocker in a couple of
3 different places that evening; correct?

4 A. On the 3rd? The whole entire day?

5 Q. I am just talking now about the search that took
6 place at 5:30 or 6:00. You said on the evening of Thursday,
7 July 3, 2008, when you were at his residence.

8 Did you see him in a couple of different
9 places in that residence?

10 A. No.

11 Q. Do you remember seeing him on the stairway?

12 A. No.

13 Q. Do you remember seeing him upstairs near a table?

14 A. Yes.

15 Q. Did you see him in his bedroom?

16 A. No.

17 Q. Just at the table; is that right?

18 A. He was on -- there is a bar or kitchen area.

19 There is a bar there. He was standing on this side of it,
20 and he was speaking with somebody. I don't remember who.

21 Q. Okay. Did you see him near Sergeant Huante on
22 July 3?

23 A. I think maybe that's who he was talking to at the
24 kitchen bar.

25 Q. You know it is standard sheriff's office practice

1 when you execute a search warrant to locate and secure all of
2 the occupants of the property before you start the search;
3 right?

4 A. Yes.

5 Q. That is for your safety for starters; right?

6 A. Yes.

7 Q. You want to go in and find out if there is anybody
8 hiding in a closet or under a bed; right?

9 A. Yes.

10 Q. Once you find the people, you want to get them in
11 a place where they can be observed by law enforcement; right?

12 A. Yes.

13 Q. It is not a good practice to have the occupants of
14 the residence wandering around unescorted while the property
15 is being searched; correct?

16 A. Correct.

17 Q. And you told me that you never saw Mr. DeMocker in
18 the garage on July 3, 2008; correct?

19 A. Correct.

20 Q. But you were involved for a while with Detective
21 Ross Diskin in searching the garage; correct?

22 A. Yes.

23 Q. You were looking for golf clubs and you were
24 looking for this mysterious head cover; right?

25 A. Yes.

1 Q. Mr. DeMocker was not there with you while you were
2 doing that search; right?

3 A. No.

4 Q. You wouldn't have allowed Mr. DeMocker to be there
5 while you were doing that search; right?

6 A. No.

7 Q. Mr. DeMocker was presumably upstairs while were
8 you in his garage; correct?

9 A. That was my understanding.

10 Q. And did you see -- do you know who Bill Hobbs is?

11 A. Yes.

12 Q. Did you know who Bill Hobbs was on July 2, 2008,
13 July 3?

14 A. Not really, no.

15 Q. Did you know who Jimmy Jarrell was on July 3,
16 2008?

17 A. Yes.

18 Q. Did you see Jimmy in the garage while were you
19 searching?

20 A. I don't remember.

21 Q. Do you know who Bill Hobbs is now?

22 A. Yes.

23 Q. Looking back, do you remember seeing Bill Hobbs at
24 the Alpine Meadows location on July 3 at all?

25 A. I don't remember, no.

1 Q. Since you don't remember, you can't remember, I
2 assume, whether he assisted you in searching the garage;
3 correct?

4 A. No.

5 Q. Now, there was a white vehicle that was partially
6 pulled into the garage when you were there; right?

7 A. Correct.

8 Q. Did you get some understanding that evening whose
9 vehicle that might have been?

10 A. On that evening, no, I don't remember.

11 Q. Were you involved at all in the search of that
12 vehicle?

13 A. No.

14 Q. Did you see that vehicle being searched?

15 A. I don't really recall.

16 Q. Did you see Dave Rhodes in the garage searching
17 that night?

18 A. I don't remember.

19 Q. Did you see Diskin go near the vehicle?

20 A. I know Diskin was in the garage. I remember him
21 being in the garage with me, but I don't remember him going
22 near the vehicle or specifically searching it, no.

23 Q. Where did you look for the head cover?

24 A. On a shelf that was in the garage. It was a metal
25 shelving apparatus.

1 Q. Anyplace else?

2 A. Me personally?

3 Q. Yes.

4 A. I believe there were some kayaks hanging from the
5 ceiling of the garage that we had pulled down and looked in
6 there also.

7 Q. Did you speak with Mr. DeMocker that evening?

8 A. No.

9 Q. Now, let's go back to the beginning of your
10 involvement in this case.

11 We heard the story from you that you had
12 your sheriff's department cell phone on vibrate that night.

13 A. Yes.

14 Q. Have you been told that maybe it would be a good
15 idea to let it ring if you were trying to be called out in
16 the middle of the night?

17 A. No.

18 Q. You still keep it on vibrate?

19 A. No.

20 Q. What do you do with it?

21 A. I leave it on on the desk on full ring. I double
22 check it before I go to bed.

23 Q. Eventually, Huante got ahold of you something like
24 6:00 in the morning. Is that your recollection?

25 A. I typically get up at 5:30 in the morning. I

1 would have noticed the phone vibrating on my nightstand soon
2 thereafter, so I called him as soon as I got the opportunity.

3 Q. And he had been trying much earlier in the
4 evening, apparently, to get ahold of you?

5 A. Yes.

6 Q. So, he says he wants you to come down to the
7 sheriff's office here in Prescott; is that right?

8 A. Yes.

9 Q. Were you working in the Prescott area on the
10 morning of July 3, 2008, otherwise? Is that your assignment?

11 A. Yes.

12 Q. You weren't assigned to the Verde. You were
13 assigned over here; correct?

14 A. Yes.

15 Q. Who was your sergeant? Was it Sergeant Huante?

16 A. Yes.

17 Q. And were you scheduled to be on duty that Thursday
18 morning?

19 A. Yes.

20 Q. So you come in early, and you come in for this
21 briefing; is that right?

22 A. Yes.

23 Q. And you think that Huante conducted the briefing?

24 A. Yes.

25 Q. What were you told?

1 A. I was -- my first thing that I was asked to do was
2 to go upstairs and get a --

3 Q. Not what you were asked. What was the briefing
4 about?

5 A. About what was going on at that time.

6 Q. And what were you told in that regard?

7 MR. BUTNER: Objection. Hearsay.

8 THE COURT: Mr. Sears?

9 MR. SEARS: Not offering it for the truth,
10 Your Honor. I am just trying to get a picture of what
11 happened that morning.

12 THE COURT: Mr. Butner, not offered for the
13 truth, just why he is doing what he is doing.

14 MR. BUTNER: Withdraw the objection.

15 THE COURT: Okay. You may answer that.

16 THE WITNESS: I come in, they said that a
17 search warrant was being written and that they needed a
18 physical description of a person that was upstairs. I don't
19 really remember them telling me who it was or what for. I
20 remember saying okay, and I went upstairs and got a physical
21 description.

22 BY MR. SEARS:

23 Q. So you were in a meeting room on the first floor
24 at 255 East Gurley Street, the sheriff's office here in
25 Prescott; right?

1 A. Yes.

2 Q. They told you to go upstairs to the level where
3 the jail used to be; correct?

4 A. Yes.

5 Q. And they told you to find somebody. How did they
6 tell you you were going to find this person?

7 A. They told me that he was in a visitation booth up
8 at the --

9 Q. Okay, got you.

10 You said you were asked to make a visual
11 observation. Is that another way of saying they wanted you
12 to look at this person?

13 A. Yes.

14 Q. So the purpose of that was to get some description
15 to go back into the search warrant that was being prepared;
16 right?

17 A. Yes.

18 Q. So you go up and you figure out where a person is
19 and you see what they are wearing. That is what you figure
20 they were asking you to look for?

21 A. Yes.

22 Q. And you come back and say, shorts, T-shirt and
23 orange sandals?

24 A. I don't recall.

25 Q. Some kind of sandals on his feet; is that right?

1 A. I don't recall what he was wearing on his feet.

2 Q. You weren't supposed to get color of his eyes or
3 height or weight or anything like that. They just wanted
4 know what he was wearing?

5 A. I believe full physical description is what I was
6 asked to get.

7 Q. You came back and you gave that information to
8 Theresa Kennedy?

9 A. I believe so, yes.

10 Q. Because she was sitting at the computer preparing
11 the search warrant?

12 A. Yes.

13 Q. And then, as I understand it, the next thing you
14 were involved in was this search of this BMW vehicle that was
15 initially parked right out back of 255 Gurley; right?

16 A. Yes.

17 Q. And you go out and that vehicle -- did you do any
18 examination of that vehicle when it was in the sheriff's
19 department parking lot?

20 A. Yes.

21 Q. What did you do?

22 A. I walked around the vehicle.

23 Q. Were any pictures taken?

24 A. I don't remember.

25 Q. There were other police officers and investigators

1 that were involved in the search of this vehicle besides you;
2 is that right?

3 A. Yes.

4 Q. Who else was involved?

5 A. Sergeant Winslow and Evidence Tech Dawn Miller.

6 Q. And you had been a detective for a little over two
7 weeks at this point?

8 A. Yes.

9 Q. Was this your first homicide call out as a
10 detective?

11 A. Yes.

12 Q. So, there is a real beehive of activity that
13 morning, it sounds like, at the sheriff's office. Lots of
14 different people working on this case already; correct?

15 A. Yes.

16 Q. You have an evidence tech, you have got a
17 sergeant. Anybody from the county attorney's office that you
18 remember involved in the search of this vehicle?

19 A. At first, yes.

20 Q. Who?

21 A. Mike Sechez.

22 Q. He's an investigator with the county attorney's
23 office?

24 A. Yes.

25 Q. You knew him before that day?

1 A. A little. I knew of him. I knew what his name
2 was.

3 Q. You knew who he worked for; right?

4 A. Yes.

5 Q. You knew he was not a sheriff's office detective?

6 A. Yes.

7 Q. So you go over and you look at the vehicle. Did
8 anybody touch the vehicle at that point that you recall?

9 A. Not that I knew of, no.

10 Q. And you were waiting for a tow truck?

11 A. Yes.

12 Q. And eventually the tow truck comes, and it hoists
13 this vehicle up on one of these flatbed towing outfits;
14 right?

15 A. Yes.

16 Q. And then it is hauled from downtown Prescott here
17 out to the county impound yard or out to the fleet office out
18 off Commerce Drive; is that right?

19 A. Yes.

20 Q. For the people on the jury that aren't from this
21 part of the county, that is essentially northwest of where we
22 are right now; correct?

23 A. Yes.

24 Q. Out towards the airport, out Willow Creek Road, if
25 you were going out that way, out towards the Prescott

1 airport; correct?

2 A. Yes.

3 Q. There are some car dealerships, and you turn and
4 go back in; is that right?

5 A. Yes.

6 Q. The fleet yard is where county vehicles are;
7 correct?

8 A. Yes.

9 Q. It is where they are repaired and kept, generally
10 speaking, if they are not being used; right?

11 A. Yes.

12 Q. There is a big impound yard next to that, just a
13 big open area with fence around it; correct?

14 A. There was, yes.

15 Q. That is where seized vehicles and other kinds of
16 vehicles were stored outdoors; right?

17 A. That is where they used to be stored, yes.

18 Q. Where you are on July 3 is in a building; right?

19 A. Yes.

20 Q. And the idea, if I understand it from what you
21 told us and what you told me back in February, is that a very
22 careful and thorough search of this vehicle was going to be
23 conducted pursuant to a separate search warrant for that
24 vehicle; right?

25 A. I believe my understanding was the vehicle was

1 included in a search warrant of the house at Bridle Path,
2 office building, and Mr. DeMocker's residence, as well as the
3 vehicle.

4 Q. And the vehicle itself was specifically identified
5 in that omnibus or group search warrant; right?

6 A. Yes.

7 Q. And your information was this was Mr. DeMocker's
8 vehicle; is that right?

9 A. Yes.

10 Q. Now, you had been told already at this point back
11 at the briefing that Mr. DeMocker was a suspect in this case;
12 correct?

13 A. I don't recall.

14 Q. Is it possible you were?

15 A. I don't remember. I really don't.

16 Q. Did you have any idea why you were searching this
17 man's vehicle?

18 A. Yeah.

19 Q. And what was that reason?

20 A. My understanding was we were searching the vehicle
21 for any evidence to either rule him out or not.

22 Q. That is what an investigation does; right?

23 A. Yes.

24 Q. So if you find something incriminating, it could
25 be used against him. If you don't find anything, then you

1 don't find anything; right?

2 A. Yes.

3 Q. Now, you were looking for a number of different
4 kinds of things on his car; weren't you?

5 A. On his car or in his car?

6 Q. On his car.

7 A. Yes.

8 Q. You were looking for blood evidence; right?

9 A. Yes.

10 Q. Sometimes blood evidence is visible with the naked
11 eye. You can see a drop of something that may appear to be
12 blood; right?

13 A. Yes.

14 Q. Then you can find these sort of unknown substances
15 like whatever it was that you took off the bumper; right?

16 A. Yes.

17 Q. Don't know what that was. Didn't necessarily
18 appear to be blood. Is that fair to say?

19 A. Yes.

20 Q. Okay. And then you are also looking for the
21 possibility of fingerprints, latent fingerprints on the
22 vehicle; right?

23 A. Yes.

24 Q. It might be important somehow in this brand new
25 case to see whose fingerprints might be on that vehicle;

1 right?

2 A. Yes.

3 Q. And then DNA evidence might be on or in that
4 vehicle; right?

5 A. Yes.

6 Q. The DNA evidence can be in blood. That is one
7 place that DNA is contained; right?

8 A. Yes.

9 Q. There are other kinds of DNA transfers that you
10 know about; right?

11 A. Yes.

12 Q. What are some examples of other ways that DNA
13 lands on something like an automobile, other than in blood?

14 A. Thelial cells or skin cells, semen, spit, hair.
15 About all I can think of right now.

16 Q. Somebody blows their nose. I hate to be graphic,
17 but that is a bodily fluid; right?

18 A. Yes.

19 Q. Or sneezes; correct?

20 A. Yes.

21 Q. When you talk about epithelial skin cells, you are
22 talking about what some people call touch DNA. Do you know
23 that term?

24 A. I think I have heard of it.

25 Q. Where somebody just touches the surface, and

1 microscopically small skin cells might be shed from that
2 person and transferred to some other surface. Is that what
3 you are thinking of?

4 A. Yes.

5 Q. Were there any D.P.S. criminalists with you when
6 this search was done of Mr. DeMocker's vehicle out at the
7 county fleet facility?

8 A. No.

9 Q. So you had an evidence tech from the Yavapai
10 County Sheriff's Office; right?

11 A. Yes.

12 Q. Just one?

13 A. Yes.

14 Q. That was Dawn Miller; correct?

15 A. Yes.

16 Q. And were photographs taken?

17 A. Yes.

18 Q. Do you know who was taking photographs?

19 A. I believe it was Ms. Miller.

20 Q. How long did the search of the vehicle take once
21 you started?

22 A. Approximately?

23 Q. Yes.

24 A. I am not sure what time we got there. I know I
25 left around quarter after noon. So it would be a guess, if I

1 was to tell you an approximate time.

2 Q. Go ahead.

3 A. I would say three or four hours.

4 Q. It was a very thorough search then?

5 A. Yes.

6 Q. You looked underneath the vehicle?

7 A. Yes.

8 Q. The vehicle was actually put up on a hoist so you
9 could inspect the underside of the vehicle; right?

10 A. Yes.

11 Q. When you did that, what were you looking for?

12 A. Any signs of evidence.

13 Q. Dirt, mud, something like that?

14 A. Yes.

15 Q. Did you find anything?

16 A. I believe so.

17 Q. What?

18 A. I don't remember exactly what it was. I remember
19 finding something underneath the car that was collected in a
20 swab, but I don't remember what it was.

21 Q. So all this biological evidence that you were
22 looking for, the blood and the possible DNA and hair, these
23 other things, you didn't have the capacity there to analyze
24 any of that; right?

25 A. Not on site, no.

1 Q. It all had to be collected and sent off to a lab
2 somewhere for analysis; right?

3 A. Yes.

4 Q. And since you weren't the case agent on this case,
5 when Mr. Butner asked you a couple of different times if you
6 knew the results of your investigation, that would be normal;
7 right? If you processed and sent something off to the lab,
8 it wouldn't necessarily come back to you after it was tested;
9 right?

10 A. If I was not the case agent, no, it would not come
11 back to me.

12 Q. Who was the case agent at the beginning of this
13 case?

14 A. My knowledge, at that time, it was Doug Brown.

15 Q. You worked with Doug?

16 A. Yes.

17 Q. He was also a relatively new detective on the
18 Prescott side?

19 A. I don't remember how long he had been in CI when I
20 got in there.

21 Q. You were certainly the newest detective?

22 A. Myself and Detective Willingham.

23 Q. Shonna Willingham?

24 A. Yes.

25 Q. From the Verde?

1 A. Yes.

2 Q. You became detectives at the same time?

3 A. Yes.

4 Q. Now, going back to the car. You told us that you
5 put on this Tyvek suit. Tell us what that is again. I
6 understand it is a suit designed to protect you, but how does
7 it come? Is it in a package?

8 A. Yes.

9 Q. You think it is a use-once-and-throw-away kind of
10 garment?

11 A. That was my understanding and that is what
12 happened to it.

13 Q. You took it out of the bag and put it on. Had you
14 every used one of those before?

15 A. No.

16 Q. Was it somewhat uncomfortable on a July day?

17 A. A little.

18 Q. Just a little warm?

19 A. Yeah.

20 Q. You put that on. Did anyone else have one on?

21 A. Yes.

22 Q. Who?

23 A. Dawn Miller did.

24 Q. Because she was going to get inside the vehicle
25 too?

1 A. Yes.

2 Q. Did you have latex gloves on?

3 A. Yes.

4 Q. Did you booties on your feet?

5 A. Yes.

6 Q. Did you have some kind of a hat or hairnet or
7 something?

8 A. That I don't recall.

9 Q. That would have made it a little bit hotter, I
10 imagine, if you had something like that on?

11 A. I suppose.

12 Q. But you just don't remember; is that right?

13 A. Yes.

14 Q. So you search the vehicle. And among the things
15 you do is a search of the trunk and the passenger
16 compartment, the inside of the vehicle; right?

17 A. Yes.

18 MR. SEARS: Let me show you 2918.

19 Phil, would you turn the ELMO on. Thank
20 you. 2918 in evidence.

21 Q. You talked about this picture of the trunk of the
22 vehicle already here today.

23 A. Yes.

24 Q. As soon as we get the overhead fired up here, if I
25 could have that back here.

1 While Phil is doing that, let me show you
2 another related photograph. This is 2818 in evidence.

3 Is this an area that you looked at on
4 July 3, 2008, out at the fleet yard?

5 A. Yes.

6 Q. You recognize that as the spare tire and the tire
7 changing equipment?

8 A. Yes.

9 Q. Okay. That is already in evidence as 2818.

10 Let me show you what I had marked for
11 identification as 2820. I will show you that to you at the
12 same time as I show you 2819 in evidence. I think these
13 might be the same photograph.

14 Are these identical photographs here?

15 A. (Whereupon, the witness reviews a document.)

16 That is what it looks like to me.

17 Q. Okay. Let's use the one that is in evidence then
18 up to the screen. Let's use 2819.

19 We are looking at the trunk here again.
20 This is the trunk of Mr. DeMocker's vehicle as it appeared on
21 July 3, 2008; correct?

22 A. Yes.

23 Q. You see this white object there?

24 A. Which one?

25 Q. This one right here next to my finger.

1 A. Yes.

2 Q. It is a little difficult to see on the overhead.

3 Let me show you the identical photo, 2820 for identification.

4 Looking at that photograph, what does
5 that white object appear to be?

6 A. A sock.

7 Q. Was that seized?

8 A. I don't recall.

9 Q. If I told you that looking through all the search
10 warrant supplements that were compiled that day, there is no
11 sock taken, would you need to look at your copy of the
12 supplements to confirm that?

13 A. Yes.

14 Q. Why don't you do that, please.

15 A. I don't have one.

16 Q. I will be happy to give them to you.

17 We have got a couple of different
18 exhibits here, Detective. Give me a moment to make sure I
19 get the right one that reflects your work.

20 You know we will catch this after lunch.
21 I don't want to waste anymore time doing this.

22 Do you know whose sock this is?

23 A. No.

24 Q. Okay. On the morning and early afternoon of
25 July 3, 2008, did you have any idea whether clothing or items

1 of clothing connected to Mr. DeMocker might be relevant
2 evidence that would be taken in a search warrant?

3 A. I thought that was on the search warrant, I
4 believe.

5 Q. Now, let's just suppose here that that sock was a
6 sock that belonged to Mr. DeMocker. It is found in the trunk
7 of his car. That would be a reasonable assumption; correct?

8 A. Yes.

9 Q. And you are looking for biological evidence,
10 including blood and DNA; right?

11 A. Yes.

12 Q. And you are looking particularly, I would imagine,
13 for blood or DNA or other biological evidence connected to
14 the victim in this case; right?

15 A. Yes.

16 Q. It wouldn't be terribly surprising to find
17 Mr. DeMocker's DNA or blood on item in his own car; correct?

18 A. Correct.

19 Q. It might be particularly useful in this case for
20 law enforcement and important in this case if the victim's
21 blood or DNA or some other biological evidence was in or
22 around his automobile; right?

23 A. Yes.

24 Q. If Mr. DeMocker, for example, was wearing that
25 sock and committed this murder, it might very well have Carol

1 Kennedy's blood on it; right?

2 A. Could have.

3 Q. It would be important to seize it and let a
4 laboratory make that determination; right?

5 A. Yes.

6 Q. And we will, after lunch, I kind of teased the
7 ending here, we will talk about whether that item appears on
8 the search warrant supplement or not.

9 There's only one search warrant
10 supplement prepared, one long one, for the items taken out of
11 Mr. DeMocker's car; correct?

12 A. No.

13 Q. Was there more than one supplement?

14 A. I believe so.

15 Q. Why would there be more than one supplement?

16 A. Because we went back the second time and took the
17 GPS stuff out of the car.

18 Q. Let's just talk about the search that was done on
19 July 3, 2008. There would be one supplement for that search
20 that was done with you and Dawn Miller in the Tyvek suits;
21 correct?

22 A. Yes.

23 Q. If the sock is not on that search warrant
24 supplement, then it wasn't taken that day; right?

25 A. Correct.

1 Q. You wouldn't ever take something and fail to
2 record it on the supplement; right?

3 A. Right.

4 Q. Well, God bless these people here.

5 Let me show you 794 here, Bates 1564,
6 counsel. I will ask you if that is a portion of the search
7 warrant supplement for July 3, 2008, the search of this motor
8 vehicle.

9 A. (Whereupon, the witness reviews a document.)

10 Yes. It is three pages concerning that
11 search.

12 Q. That is the entire supplement for the first search
13 of Mr. DeMocker's car that took place on July 3, 2008;
14 correct?

15 A. Yes.

16 Q. No sock?

17 A. No sock.

18 Q. Can you tell looking at the photograph in front of
19 you, 2820 for identification, whether that is one sock or a
20 pair rolled up?

21 A. I can't tell.

22 Q. Okay. And do you remember getting that out and
23 looking at it?

24 A. No, I do not.

25 Q. Were you the person that searched this trunk area?

1 A. Yes.

2 Q. And so you would have taken out and examined and
3 handled every item we can see in this photograph, 2819? Is
4 that right?

5 A. Yes.

6 Q. Let's take a look at 2818, an area you told me
7 that you recognize. This is the spare tire in that vehicle.
8 You have to lift a mat up to see it; right?

9 A. Yes.

10 Q. And it is a little bit hard to see in this
11 photograph, as are most things in these photographs, but that
12 looks to me like the end of a jack handle; correct?

13 A. Yes.

14 Q. Do you know what this object is that comes out
15 here?

16 A. I believe -- I can't really tell what it is.

17 Q. Let me show you the actual exhibit here for a
18 second. It might be a little clearer.

19 A. (Whereupon, the witness reviews a document.)

20 I still can't tell what it is.

21 Q. Okay. Something apparently to do with the spare
22 tire and the apparatus necessary to change the tire; right?

23 A. Yes.

24 Q. Have you ever seen anybody hit with a jack handle?

25 A. No.

1 Q. Do you think a jack handle could do some damage if
2 it was swung hard enough at a human being?

3 A. Yes.

4 Q. Do you think it would leave linear marks on a
5 human being's body?

6 A. Yes.

7 Q. Do you think it could split open somebody's skull?

8 A. Yes.

9 Q. Is there a reason why you didn't take the jack
10 handle?

11 A. Yes.

12 Q. Why?

13 A. No blood on it.

14 Q. Let's talk about that. I understand you had only
15 been a detective for a little over two weeks, but is it your
16 training and experience that every murder weapon had to have
17 blood on it in order to be a possible murder weapon?

18 A. No.

19 Q. Sometimes bad people that do bad things wipe down
20 murder weapons; right?

21 A. Yeah.

22 Q. In your mind, though, your methodology when you
23 are looking at objects, even in Mr. DeMocker's car, would be
24 if you don't see blood it is not a weapon?

25 A. No.

1 Q. You didn't take this jack handle because you
2 didn't see any blood on it; right?

3 A. Yes.

4 Q. Did you take this assembly apart?

5 A. Yes.

6 Q. Did you inspect all of the pieces of it? That
7 looks like the stand. That black object that goes diagonally
8 across the screen looks like the base for a jack; right?

9 A. That's what I guess it is.

10 Q. Did you look at everything for blood?

11 A. Yes.

12 Q. Not finding any blood, you, Detective Steven
13 Surak, concluded that these were not possible murder weapons
14 and put them back?

15 A. With the assistance of the sergeant that was
16 there.

17 Q. So you conferred with Sergeant Winslow?

18 A. Yes.

19 Q. And he agreed these weren't murder weapons, the
20 two of you; is that right?

21 A. I would say yeah.

22 Q. And the sergeant made the call, so you put the
23 stuff back; is that right?

24 A. Yes.

25 Q. Okay. Gotcha.

1 Did you ever hear from any source what
2 the results of the scientific examination of the evidence you
3 seized out of my client's car turned out to be?

4 A. No.

5 Q. If I told you that no blood or biological evidence
6 of any significance in this case was found in the car, would
7 that be news to you today?

8 A. Yes.

9 Q. Would you suspect, though, that if, for example,
10 Carol Kennedy's blood had been found in something that you
11 took from the car, you would know by now?

12 A. I would think so.

13 Q. It would be all over the sheriff's department;
14 wouldn't it?

15 A. Yes.

16 Q. And you haven't heard any such story or
17 allegation; correct?

18 A. No.

19 Q. Now, after you are done with the search, then
20 where do you go next -- the search of the car?

21 A. Out to 7485 Bridle Path.

22 MR. SEARS: Okay. Your Honor, this would be a
23 good time to break. I need to set up some photographs for
24 this next line.

25 THE COURT: Thank you, Mr. Sears.

1 We will take the noon recess, ladies and
2 gentlemen. Please remember the admonition. I am going to
3 ask that you return at 1:30 to try to minimize waiting in the
4 jury room, because I think there are some legal matters to
5 take up. Please return at 1:30. I told you about the
6 admonition.

7 And remember, Detective, the rule of
8 exclusion has been invoked.

9 You are excused, all of you, for the noon
10 recess. I do want the parties to remain for just a minute.
11 Thank you.

12 (Whereupon, the jury exits the courtroom.)

13 (Whereupon, a discussion was held and reported
14 but is not contained herein.)

15 (Whereupon, a recess was taken at 11:58 a.m.
16 to resume at 1:30 p.m. of the same day.)
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SEPTEMBER 15, 2010
1:16 P.M.

JURY TRIAL

THE COURT: The record will reflect the presence of the defendant, Mr. DeMocker, Ms. Chapman, Mr. Sears and Mr. Hammond Mr. Butner is here for the State, and it is 1:15. We are going to discuss any pending matters.

(Whereupon, a discussion was held and reported but is not contained herein.)

(Whereupon, the jury enters the courtroom.)

THE COURT: The record will show the presence of the defendant, the attorneys and the jury.

Detective Surak has returned to the stand. He is under oath, and, Mr. Sears, you may continue with your cross-examination when you are ready.

MR. SEARS: Thank you, Your Honor.

CROSS-EXAMINATION RESUMED

BY MR. SEARS:

Q. Detective, let me show you two photographs. I have had them marked as 3270 and 3271 for identification. Let me show you 3270 first. I have shown them to Mr. Butner.

THE COURT: Mr. Sears, sorry. There was noise going, and I was not hearing well.

Would you please resume. Start again.

MR. SEARS: I will rewind here.

1 Q. I am showing you two photographs here, Detective.
2 3270 and 3271 for identification.

3 Let's begin with 3270. Do you recognize
4 what is depicted in that photograph in front of you?

5 A. Looks like a car door.

6 Q. Do you recognize that particularly as the driver's
7 side front car door of the BMW you searched on July 3, 2008?

8 A. I didn't take this picture, but I can't really
9 tell, no.

10 Q. Let me show you 3271 and ask you if you recognize
11 what is in that photograph?

12 A. Yes, I do.

13 Q. And do you recognize that as a photograph taken in
14 the interior of Mr. DeMocker's car on July 3, 2008, showing
15 some items?

16 A. Yes.

17 Q. And you saw those items that day, and that is the
18 way they looked?

19 A. Yes.

20 MR. SEARS: I would move 3271, Your Honor.

21 MR. BUTNER: No objection.

22 THE COURT: 3271 is admitted.

23 MR. SEARS: Okay. Rich, if we could project
24 3271.

25 I am going to take your laser pointer

1 here.

2 This is the inside of the glove box of
3 Mr. DeMocker's BMW as it appeared on the 3rd of July, 2008;
4 isn't that right?

5 A. Yes.

6 Q. And you recognize this object here that I am
7 circling with the laser pointer?

8 A. Yes.

9 Q. Tell us what that is, please.

10 A. Garage door opener.

11 Q. Did you seize that on July 3, 2008?

12 A. Yes.

13 Q. And you submitted that to the evidence tech and
14 eventually got logged into evidence, as far as you know;
15 right?

16 A. Yes.

17 Q. Let me show you again, if I could have you look at
18 3270, which you said you didn't recognize, do you see this
19 object here that I am pointing to?

20 A. Yes, I do.

21 Q. Do you recognize what that might be?

22 A. I don't know.

23 Q. Are you telling us that as you sit here today, you
24 can't tell us whether this is the inside of the door of
25 Mr. DeMocker's BMW?

1 A. I do not recall.

2 Q. You just don't know; is that right?

3 A. Yes.

4 Q. Okay. Did you look at the inside of his door?

5 A. Yes.

6 Q. Did you search the pockets on the inside of the
7 door?

8 A. I am sure I did.

9 Q. Did you take anything from the pockets?

10 A. Not that I can recall.

11 Q. Okay. Well, we will see if somebody else knows
12 what that is.

13 Did you find any other openers of any
14 kind in Mr. DeMocker's car on July 3, other than this one in
15 3271 that we are looking at?

16 A. I don't recall.

17 Q. If you found them, would you have seized them,
18 would have you logged them in on the supplement?

19 A. Yes.

20 Q. Let me show you again 794, and I have opened it to
21 the pages regarding the car search, and tell me if you see
22 any garage door opener.

23 A. (Whereupon, the witness reviews a document.)

24 Evidence No. 217, garage door opener
25 found in glove box.

1 Q. That is this one right here in Exhibit 3271 up to
2 the screen; right?

3 A. I believe so, yes.

4 Q. Do you know what door that is to? Do you know
5 what that opens?

6 A. Not a clue.

7 Q. At the time you were searching Mr. DeMocker's car,
8 late morning or early afternoon on July 3, you had not been
9 out to his residence; is that right?

10 A. That is correct.

11 Q. You didn't know that his resident was in a gated
12 community at that time; is that right?

13 A. That is correct.

14 Q. When you went out there later that night, you
15 discovered that, in fact, you had to go through a locked gate
16 to get to Mr. DeMocker's condominium; correct?

17 A. Yes.

18 Q. Do you know how Mr. DeMocker got in through that
19 locked gate on a regular basis?

20 A. No, I do not.

21 Q. Would you assume that Mr. DeMocker had some sort
22 of a device that would open the gate for him?

23 A. I was not aware of that, no.

24 Q. Have you ever seen gate opening devices?

25 A. No.

1 Q. You just don't know what they look like?

2 A. No.

3 Q. Whatever is depicted in 3270 that you and I were
4 just looking at, you can't tell me what that is.

5 A. No.

6 Q. Rich, let's jump over to 2215, which is in
7 evidence, please.

8 I have here Exhibit 2215 in evidence.
9 This is an aerial photo, and I will tell you, using the laser
10 pointer here, to orient you, Detective, this is Williamson
11 Valley Road here running more or less to the north, northwest
12 across this map.

13 Do you see where that is?

14 A. Yes.

15 Q. If I tell you over here that this is, along this
16 edge here, this is Bridle Path, and it comes down this way
17 and turns?

18 Do you recognize that area, generally?

19 A. It is kind of a high shot, but it looks like this
20 same area.

21 Q. Let's get closer. This is the magic of aerial
22 photography. Now, here we are flying a little bit lower.

23 You see this is Bridle Path, and you are
24 familiar with this 90-degree left-hand turn that it makes.

25 A. Yes.

1 Q. You know that.

2 And do you see on here, this is the main
3 house at 7485 and the garage and the guest quarters. Do you
4 recognize those structures?

5 A. Yes.

6 Q. Up here in the top, this is Glenshandra Drive; is
7 it not?

8 A. Yes.

9 Q. And this is the fence light. There is a gate at
10 the end of Glenshandra we know about; correct?

11 A. Yes.

12 Q. There is a trail that you see on this aerial
13 photograph that goes off to the east, northeast away from
14 that gate; correct?

15 A. Yes.

16 Q. And you see that common fence line that runs past
17 the gate at Glenshandra, comes south and comes right behind
18 the 7485 Bridle path scene.

19 Do you see that fence line there?

20 A. Yes.

21 Q. You've used the name Deep Well Ranch for this open
22 area to the east and the north and the south of the Bridle
23 Path address. Is that how you know it?

24 A. That is how I know it, yes.

25 Q. You said that you thought that in this open area

1 there was some sort of mix of privately owned land and some
2 sort of state land. Is that your understanding?

3 A. That is my understanding.

4 Q. Where did you get that information?

5 A. From living in the area for so long.

6 Q. How long have you lived in the area?

7 A. 22 years.

8 Q. You know, then, that the Deep Well Ranch is a very
9 large piece of property; right?

10 A. Yes.

11 Q. If I told you it was a little bit shy of 10,000
12 acres, does that sound about right?

13 A. I am not for sure.

14 Q. And if I told you -- you know that from this point
15 here, the Deep Well Ranch goes way east, all the way over to
16 Highway 89; correct, on the eastern boundary?

17 A. I don't know that personally.

18 Q. You know there is open ranch land from right
19 behind the crime scene all the way over to 89. You know
20 there are no houses, except for the ranch houses, if you went
21 straight east from here; right?

22 A. I don't know that for certain.

23 Q. Have you ever been out on the Deep Well Ranch?

24 A. Once or twice.

25 Q. It is a big place; right?

1 A. Yes.

2 Q. And you know where the Chino Loop Road is north of
3 here?

4 A. Yes.

5 Q. The Outer Loop Road. The Deep Well Ranch runs up
6 to the Outer Loop Road?

7 A. Yes.

8 Q. It goes south for quite a considerable distance,
9 south of this Bridle Path location; correct?

10 A. I don't know.

11 Q. Well, let's pull back a little bit, Rich. Let's
12 take it up a little bit. Try and get a sense of -- anybody
13 that needs to use the restroom. Rich, can you go over to the
14 east and to the right a little bit, show them more of the
15 open land.

16 MR. ROBERTSON: That is as far as it goes.

17 BY MR. SEARS:

18 Q. You can see from this higher shot, you can see a
19 considerable amount of open land to the south of the Bridle
20 Path area, this is the residence of Bridle Path.

21 There is a lot of open land here; right?

22 A. Yes.

23 Q. Rich, can you go back down.

24 My first question is: On this July 6th
25 search that you participated in, you said Huante was there

1 early that morning as well; right?

2 A. Yes.

3 Q. Who made the decision, if anybody, about what
4 particular area this line search was going to cover?

5 A. I believe it was either Sergeant Huante or
6 somebody in the Back Country unit.

7 Q. You have a group of back country volunteers that
8 were going to be part of this line search?

9 A. Yes.

10 Q. They were in this arm-to-arm line with you; is
11 that right?

12 A. Yes.

13 Q. You didn't participate in the decision about what
14 area to search; right?

15 A. No.

16 Q. Prior to this search, this search was on the 6th
17 of July. The murder took place Wednesday, the 2nd. Your
18 first search, the searches of the car and Alpine Meadows were
19 the next day, Thursday, the 3rd. Friday would have been the
20 4th of July. Saturday the 5th.

21 So we are talking about Sunday morning,
22 very early, the 6th of July?

23 A. I thought it was Saturday that we went out there.

24 Q. The records we have say you went on the 6th; is
25 that right?

1 A. If it is say the 6th, then yeah, that would be
2 right.

3 Q. 2nd is Wednesday. 3rd is Thursday. 4th is
4 Friday. 5th is Saturday. I'm getting the 6th as Sunday.
5 Would you agree with me?

6 A. I said I thought it was Saturday we went out
7 there.

8 Q. Did you go on the 5th or the 6th?

9 A. I don't recall.

10 Q. Do you have a report with you that would help you?

11 A. No, I do not.

12 Q. Whatever day it was when you went out there, you
13 started early in the morning. There was a decision made that
14 there was going to be this line search of some part of this
15 open land behind the house; is that right?

16 A. Yes.

17 Q. Would it be fair to say that the decision as to
18 where you started up here at the north end was related
19 perhaps somehow to some tire and shoe prints that had been
20 found a few days earlier in this general area? Was that in
21 any way in your mind connected with where the search started?

22 A. No.

23 Q. Do you think that was just a random starting
24 point?

25 A. I was told to meet there. That is where I went.

1 Q. You weren't asking any questions, because you had
2 been a detective for 20 days. You had been a detective shy
3 of three weeks, so you weren't going to ask questions about
4 why are we searching here?

5 A. Correct.

6 Q. Were you ever in the military?

7 A. No.

8 Q. The idea that you start up here and then head
9 south, obviously it is connected to going down to an area
10 behind the Bridle Path house. That would make sense; right?

11 A. That is my understanding.

12 Q. The idea is was you were looking for some kind of
13 evidence that might be connected to this terrible murder that
14 had happened on the 2nd; right?

15 A. Yes.

16 Q. It could be just about anything. It could be
17 pieces of paper or pieces of rebar or who knows what.
18 Anything out of the ordinary, the group was instructed to
19 collect; right?

20 A. Yes.

21 Q. But what about things that might have been out
22 here, way up on the east side here, maybe twice the distance
23 you went? When was that going to be searched?

24 A. I don't know.

25 Q. Was it ever searched?

1 A. Not to my knowledge. I don't know.

2 Q. And what about even further still? What about
3 another half a mile or mile out in that area? Was any effort
4 ever made to search out in there?

5 A. I don't know.

6 Q. There are lots of different ways to get onto the
7 Deep Well Ranch, other than the gate at Glenshandra; aren't
8 there?

9 A. I am sure there is.

10 Q. You can see in these photos -- we looked at these
11 many times now. You can see trails of varying descriptions
12 here. You can see trails coming off of other trails. You
13 can see what may be fainter cattle trails through the bushes
14 here. There is just a maze of foot paths and trails just
15 right in this area east of Bridle Path; isn't that right?

16 A. Yes.

17 Q. There are lots of lots of bushes and trees. We
18 can see them all in this picture. More than you can count;
19 right?

20 A. Yeah.

21 Q. Something of value could be under every one of
22 those bushes or trees; right?

23 A. Sure.

24 Q. What was the plan? What was the plan that the
25 sheriff's department had about how this area was going to be

1 searched and other areas were going to be searched to see
2 what evidence might be found in this case, a murder weapon?

3 A. My knowledge is that the path up there, the
4 farthest path was as far as we went, went out to the east.
5 Myself and Theresa Kennedy went out probably about a hundred
6 to 200 yards out farther than that.

7 Q. Past this trail here?

8 A. Yes.

9 Q. You went past that?

10 A. Yes.

11 Q. Did you go off this picture?

12 A. No.

13 Q. Even when you Theresa were searching, you were
14 still in the area covered by Exhibit 2215?

15 A. Yes.

16 Q. How about south? How about further south? Who
17 explored, if anybody, these trails heading south?

18 A. I went further south.

19 Q. How much further? Off this picture?

20 A. No. About even with what I would consider the
21 house to the south of the 7485.

22 Q. This house here?

23 A. Yeah. The southern border of that address.

24 Q. Kind of out this way?

25 A. Yeah, somewhere.

1 Q. Where I am with the laser pointer.

2 A. A little bit farther south.

3 Q. Even a little bit further south?

4 A. Up there.

5 Q. You went by yourself and did that?

6 A. Yes.

7 Q. You didn't find anything?

8 A. No.

9 Q. You would agree with me that it is certainly
10 possible that the items that the State has long said are
11 missing; the golf club, shoes, other items could be somewhere
12 out in an area that was never searched; correct? Right now
13 this very minute they could still be there?

14 A. I don't know.

15 Q. I understand it is a daunting prospect. This is
16 an awful lot of area there. Were you ever present for any
17 meetings or briefings where some strategy was at least talked
18 about as to how to conduct some sort of a meaningful search
19 of a larger area on the open land?

20 A. I was present for a conversation that where we
21 found the shoe tracks either heading in or going out, how far
22 somebody could throw something, and searching about that
23 distance.

24 Q. That is what you tried to do?

25 A. Yes.

1 Q. But doesn't that assume, Detective, that those
2 shoe prints are connected with this case?

3 A. Sorry? I didn't understand the question.

4 Q. If you are only going to limit your search to how
5 far somebody walking and leaving shoe prints could throw
6 something, the operative assumption would be that those shoe
7 prints are connected to this case; right?

8 A. Yes.

9 Q. What if they aren't? What if they have nothing to
10 do with this case? Then have you limited your search in an
11 unreasonable way?

12 A. Sorry? I don't understand the question.

13 Q. Remember you told me early on that you understood
14 that when you were first doing these searches, searching the
15 car, you were not just looking for evidence that would
16 incriminate my client, Mr. DeMocker; right? You weren't just
17 looking for things that would incriminate him; correct?

18 A. Correct.

19 Q. You were looking for things that might exclude
20 him; correct?

21 A. Correct.

22 Q. So, if there was exculpatory evidence -- you know
23 what that means; right?

24 A. No.

25 Q. You have two different terms. Inculpatory and

1 exculpatory. Inculpatory evidence is evidence that points to
2 a particular person, that incriminates them.

3 The opposite of that is exculpatory
4 evidence. Evidence that tends to point away from a person
5 and tends to show that they didn't do something. That is
6 what inculpatory and exculpatory means.

7 What if there was exculpatory evidence
8 that pointed away from my client that was out here yards or
9 feet past where you all stopped searching? That would be
10 very important; wouldn't it?

11 A. Yes.

12 Q. We will never know, because no one ever searched
13 there; right?

14 A. I don't know.

15 Q. You didn't search there?

16 A. No.

17 Q. By the time you did this search on July 6th, the
18 sheriff's department believed that Mr. DeMocker was a
19 suspect. That is true; isn't it?

20 A. I don't know.

21 Q. If they did, they didn't tell you?

22 A. Correct.

23 MR. SEARS: No further questions.

24 THE COURT: Thank you, Mr. Sears.

25 Redirect, Mr. Butner.

1 MR. BUTNER: If I could have just a moment,
2 Judge.

3 THE COURT: Yes.

4 MR. BUTNER: Thanks. I have no further
5 questions of this witness, Judge.

6 THE COURT: Okay. Are there jury questions,
7 Phil?

8 THE BAILIFF: There are.

9 THE COURT: If I could see those, and then we
10 will see what type of recess we may need to take.

11 Phil, would you let Mr. Butner first look
12 and then pass to the defense table. And, Mr. Butner, we
13 won't address that here, but I would like you to go ahead and
14 look at the questions, and then we will have a side bar.

15 If I can see the attorneys.

16 Let's meet at side bar.

17 (Whereupon, a discussion was held off the record.)

18 QUESTIONS BY THE JURY

19 THE COURT: Detective, I will ask the
20 questions. The lawyers may choose to follow-up.

21 First one: Did you or other searchers
22 search the land on the Deep Well Ranch side of the fence
23 south of the Bridle Path residence, southeast corner going
24 towards the Pioneer Parkway trailhead?

25 THE WITNESS: Maybe I am not understanding

1 where they are talking about.

2 THE COURT: I don't know if it would help to
3 have the exhibit up or not.

4 THE WITNESS: Directly south of the property?

5 THE COURT: I will read the question again.

6 Did you or other searchers search the
7 land on the Deep Well side of the fence, south of the Bridle
8 Path residence, southeast corner going towards the Pioneer
9 Parkway trailhead?

10 THE WITNESS: I did search south of the
11 residence, southeast corner of the Deep Well Ranch. It is a
12 big property. I searched approximately, I would say, a
13 hundred, 200 yards to the south of the 7485 Bridle Path
14 property, and out, I would say, 500 to 1,000 yards to the
15 east.

16 THE COURT: Follow-up, Mr. Butner?

17 MR. BUTNER: No follow-up on that question,
18 Judge. Thank you.

19 THE COURT: Mr. Sears.

20 FOLLOW-UP QUESTIONS

21 BY MR. SEARS:

22 Q. You know where Pioneer Parkway is; correct?

23 A. Yes.

24 Q. You know that that is significantly south of 7485
25 Bridle Path; correct?

1 A. Yes.

2 Q. You know that there are trailheads on Pioneer
3 Parkway on both sides of the road?

4 A. Yes.

5 Q. Do you know whether or not a person could get on a
6 trailhead at Pioneer Parkway and make their way all the way
7 up to the Bridle Path address on a trail?

8 A. That I don't know.

9 Q. And do you have any estimate as to how far it is
10 from Pioneer Parkway, as the crow flies, up to Bridle Path?

11 A. As the crow flies?

12 Q. Yes.

13 A. I would say at least five miles.

14 Q. Do you know whether the Deep Well Ranch goes all
15 the way down to Pioneer Parkway?

16 A. I know that particular corner of Williamson Valley
17 Road, Pioneer Parkway is state land.

18 Q. Is it your understanding that the Deep Well is
19 what they sometimes call a checkerboard ranch where there are
20 sections of state land checkerboarded with sections of
21 private land?

22 A. Yes.

23 Q. If there was state land at the corner of
24 Williamson Valley Road and Pioneer Parkway, do you know
25 whether it is considered part of the Deep Well Ranch or not?

1 A. That particular corner?

2 Q. Yes.

3 A. I don't know.

4 Q. Is it your understanding that when cattle ranches,
5 like the Deep Well Ranch, utilize state land? They often do
6 that with a cattle lease?

7 A. Yes.

8 Q. Do you know where the cattle lease for the Deep
9 Well Ranch extends?

10 A. No.

11 Q. Do you know where the Pipeline Trail is?

12 A. No.

13 Q. You never heard that expression?

14 A. No.

15 Q. Do you know where the natural gas pipeline that
16 runs through the Deep Well Ranch is?

17 A. No.

18 Q. Did you know there was a natural gas pipeline that
19 runs through the Deep Well Ranch?

20 A. No.

21 Q. If I asked you where the Pipeline trailhead is,
22 there is a good chance you don't know where that is either;
23 right?

24 A. No.

25 MR. SEARS: No other questions.

1 THE COURT: Mr. Butner, any further questions?

2 MR. BUTNER: No questions, Judge.

3 QUESTIONS BY THE JURY

4 THE COURT: The paper you found, was there
5 anything written on it?

6 THE WITNESS: Yes.

7 THE COURT: Follow-up?

8 FOLLOW-UP QUESTIONS

9 BY MR. BUTNER:

10 Q. The paper that you found, do you recall basically
11 what the nature of the stuff written on it was?

12 A. It looked to me like a car care receipt. It was
13 not to the address of 7485. The victim's name was not on it,
14 neither was the suspect's. I don't even remember what name
15 was on it. I had somebody's name and address. It had
16 something to do with some sort of car care.

17 Q. That was submitted into evidence by you; correct?

18 A. Yes.

19 Q. And presumably somebody else followed up and
20 investigated that?

21 A. Presumably.

22 Q. You didn't hear what the results of that
23 investigation were?

24 A. No.

25 Q. If they had been fruitful in some regard, do you

1 think you would have heard about the results of the
2 investigation?

3 A. I don't know.

4 Q. If it had anything to do with this case, do you
5 think you would have heard about the results of the
6 investigation?

7 A. Maybe, maybe not.

8 MR. BUTNER: No further questions.

9 THE COURT: Mr. Sears?

10 FOLLOW-UP QUESTIONS

11 BY MR. SEARS:

12 Q. Do people in the sheriff's office not talk to you?

13 A. They do.

14 MR. SEARS: No other questions.

15 QUESTIONS BY THE JURY

16 THE COURT: When were you informed that
17 Mr. DeMocker was a suspect?

18 THE WITNESS: When was I informed or when was
19 I aware?

20 THE COURT: The question was when were you
21 informed that Mr. DeMocker was a suspect?

22 THE WITNESS: It was prior to the autopsy on
23 July 3rd, 2008.

24 THE COURT: Follow-up, Mr. Butner?

25

FOLLOW-UP QUESTIONS

BY MR. BUTNER:

Q. Was it after the noon hour on July 3rd of the year 2008?

A. Before or after?

Q. After? Was it after the noon hour of July 3rd of the year 2008, if you can recall?

A. I don't recall.

Q. But it was before the autopsy?

A. Yes.

Q. And approximately what time did the autopsy take place?

A. About 3:00, I believe.

Q. So sometime before three o'clock?

A. Yes.

Q. Was it in the morning hours, to your knowledge?

A. No.

Q. So sometime in the afternoon you found out that Mr. DeMocker was being considered as a suspect?

A. I believe so.

MR. BUTNER: No further questions.

THE COURT: Mr. Sears?

FOLLOW-UP QUESTIONS

BY MR. SEARS:

Q. Who said that?

1 A. I don't remember.

2 Q. More than one person?

3 A. I really don't remember.

4 Q. Where were you when you got that information?

5 Were you still out at Bridle Path?

6 A. I believe so, yes.

7 MR. SEARS: Thank you. No other questions,
8 Your Honor.

9 THE COURT: Thank you.

10 Counsel, I just need to clear up
11 something regarding an exhibit, and I had this, too. There
12 was a reference to the aerial photo of 2215. I think that
13 might not be the correct number.

14 MR. SEARS: It is, Your Honor. We were just
15 talking about that. And I was under, apparently, the
16 mistaken impression that this had been admitted. We have
17 shown many photographs, even just now, from this aerial
18 photograph for that objection.

19 For the record I would move 2215, which
20 is a copy, which the State has had for sometime.

21 MR. BUTNER: There is no objection, Mr. Sears.

22 THE COURT: Then we will -- at this time I
23 will state Exhibit 2215 is admitted. Thank you.

24 May Detective Surak be excused has a
25 witness, Counsel? Mr. Butner, may the witness be excused?

1 MR. BUTNER: He may be excused, Your Honor.

2 Thank you.

3 THE COURT: Mr. Sears?

4 MR. SEARS: Yes, Your Honor.

5 THE COURT: Detective, you will be excused as
6 a witness. You indicated to me you fully understand what it
7 means when the exclusion of witnesses has been invoked;
8 correct?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Please watch your step. You are
11 excused. Thank you.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: You are welcome.

14 Mr. Butner.

15 MR. BUTNER: I would like to call Liz Minard
16 to the stand, Judge.

17 THE COURT: Okay. Ma'am, if would you please
18 stand where the bailiff is indicating and raise your right
19 hand and be sworn by the clerk.

20 THE CLERK: You do solemnly swear or affirm
21 under the penalty of perjury that the testimony you are about
22 to give will be the truth, the whole truth, and nothing but
23 the truth, so help you God?

24 THE WITNESS: I do.

25 THE COURT: Please be seated at the witness

1 stand.

2 Please begin by stating and spelling your
3 full name.

4 THE WITNESS: Elizabeth Yefimov Minard,
5 E-L-I-Z-A-B-E-T-H, Y-E-F-I-M-O-V, M-I-N-A-R-D.

6 THE COURT: Thank you.

7 Mr. Butner.

8 ELIZABETH YEFIMOV MINARD,
9 called as a witness, having been duly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. BUTNER:

13 Q. What was your middle name?

14 A. Yefimov, Y-E-F-I-M-O-V.

15 Q. Thank you.

16 What is your present occupation,
17 Ms. Minard?

18 A. I am a senior registered client associate.

19 Q. A senior registered client associate. What does
20 that mean?

21 A. I am an associate or an assistant to a broker.

22 Q. And what kind of a broker are you an assistant to?

23 A. Stocks, bonds, mutual funds.

24 Q. So you are an assistant to a stock broker?

25 A. Essentially, yes.

1 Q. In fact, who is the stock broker to whom you are
2 an assistant?

3 A. Barbara O'non.

4 Q. And how long have you been Barbara O'non's
5 assistant, or I should say her senior registered client
6 associate?

7 A. A little over a year.

8 Q. And how long have you worked with Barbara O'non?

9 A. Closer to two years.

10 Q. When did you first begin working with Barbara
11 O'non?

12 A. Officially, that would be in October of 2008.

13 Q. And when you say "officially in October of 2008,"
14 what does that mean?

15 A. That means Barbara O'non and Mr. DeMocker were in
16 a partnership together. So when I came on board in the
17 Prescott office as the assistant there, I had some
18 interaction there with her.

19 Q. Okay. And how is it that you officially became
20 working with her in October of 2008?

21 A. When Mr. DeMocker was arrested, I had been working
22 with his clients at that point for several months, and the
23 decision was made that I would continue working with them,
24 and Barbara was one of the brokers that had taken over
25 working that book.

1 Q. So you went and worked with Barbara at that point
2 in time?

3 A. Yes.

4 Q. Hadn't you been working with her prior to that
5 time also, though?

6 A. Not in an official capacity. She, at that point,
7 was working in the Sun City West office, I believe it was,
8 and we would have some contact if there was something that
9 needed to be done with a client, if she had a question or
10 that kind of thing. The interaction was minimal at that
11 point up until the arrest.

12 Q. Yet, she and Mr. DeMocker were still partners in
13 that time frame? When I say that time frame, I am talking
14 about July of 2008 to October of 2008.

15 A. They were partners for part of that time. In that
16 time frame, the split of their business happened officially.
17 So part of the time, yes, part of the time, no.

18 Q. When their business was split officially, is that
19 when you went and worked with Ms. O'non?

20 A. No. At that point I was working with
21 Mr. DeMocker.

22 Q. You continued to work with Mr. DeMocker?

23 A. That's correct.

24 Q. But ultimately then you ended up going with
25 Ms. O'non?

1 A. Yes.

2 Q. Okay. And let's just back up in time a little
3 bit. Where are you working right now?

4 A. Wells Fargo Advisors.

5 Q. And in what community are you working?

6 A. Scottsdale.

7 Q. And back in July of 2008 where were you working?

8 A. UBS Financial Services.

9 Q. When did you begin working for UBS Financial
10 Services?

11 A. In 1999.

12 Q. And were you working in the Prescott area during
13 that time frame?

14 A. No, I was working in Sedona.

15 Q. And how long did you work for UBS in Sedona?

16 A. From '99 to July -- actually, it would be June
17 30th of 2008. There was a year in that time frame where I
18 did go to Bank One and then I came back to UBS.

19 Q. So you worked for UBS at the Sedona office from
20 1999 until June 30th of the year 2008 with a one-year hiatus
21 where you were at Bank One?

22 A. That's correct.

23 Q. So what was ultimately -- I shouldn't say
24 ultimately. After leaving the Sedona office on June 30th of
25 2008, did you continue to work for UBS?

1 A. Yes.

2 Q. Where did you work for UBS?

3 A. Prescott.

4 Q. So your first day on the job in Prescott at UBS
5 was July 1st of the year 2008?

6 A. That's correct.

7 Q. And when you came to the Prescott office of UBS,
8 what was your job title at that point?

9 A. Officially it was financial advisor, but I was
10 transitioning into an assistant role.

11 Q. So, if you would, you said officially it was
12 financial advisor, what is the job or the duties of a
13 financial advisor?

14 A. A broker.

15 Q. A stock and securities broker?

16 A. Correct.

17 Q. So you were a fully qualified stock broker at that
18 point in time?

19 A. Yes.

20 Q. And you indicated that you were transitioning to a
21 different job?

22 A. That's correct.

23 Q. What job were you transitioning to?

24 A. An assistant to a broker. Client services
25 associate was the official title.

1 Q. Client services associate. What are from duties
2 of a client services associate?

3 A. Primarily administrative.

4 Q. When you say administrative, what does that mean?
5 What do you do?

6 A. The broker sells whatever he or she sells, and I
7 make it happen, make sure all the paperwork is right. I make
8 sure the client is taken care of, any needs in their
9 accounts. The duties are varied.

10 Q. And when you came to UBS office in Prescott on
11 July 1st of 2008, although you were still titled as a
12 financial advisor, were you continuing to perform those
13 duties or had you already begun performing the other duties
14 as a client services associate?

15 A. I had already begun performing duties as an
16 associate.

17 Q. Why were you transitioning from the financial
18 advisor to the client services associate position?

19 A. I was going through divorce. I wanted a regular
20 paycheck, rather than one tied to commissions.

21 Q. You wanted a steady salary?

22 A. Precisely.

23 Q. And so you came to UBS on July 1st of the year
24 2008, and then, of course, Carol Kennedy's homicide occurred
25 on July 2nd of 2008. Did you continue to work at the UBS

1 office as of July 2nd of 2008?

2 A. I did.

3 Q. And at that point in time you were transitioning;
4 is that right?

5 A. Yes.

6 Q. So were you -- what was your job title or -- yeah.
7 What was your job title in August of 2008, if you can recall?

8 A. I believe it was still financial advisor. I don't
9 remember the precise date where UBS said okay, this is when
10 we are changing your title.

11 Q. What was your job duties as of August?

12 A. Administrative assistant.

13 Q. As an administrative assistant, would you describe
14 for us, basically, what those duties involved in the UBS
15 office in Prescott?

16 A. Well, everything that I described before. Gosh,
17 anything that needed to happen in the account. Anything
18 other than the sell side. The brokering is the sell side. I
19 did everything else, essentially.

20 Q. Did that include duties like getting the mail and
21 opening the mail?

22 A. Yes.

23 Q. Now, do you know who Jackie Wheeler is?

24 A. I do.

25 Q. Who is Jackie Wheeler?

1 A. She is the manager at UBS.

2 Q. Where does Jackie Wheeler work for UBS?

3 A. Ordinarily in the Phoenix office.

4 Q. And back in August of 2008, do you have a
5 recollection as to where she worked?

6 A. Well, she was still primarily out of the Phoenix
7 office, I believe, as far as I know. She did travel to other
8 branches on occasion.

9 Q. What was your understanding as to why she traveled
10 to other branches on occasion?

11 A. Well, I think just to make sure that everything
12 was running smoothly.

13 Q. And was she in the financial advisor side of the
14 business, or was she in the administrative side of the
15 business?

16 A. Administrative.

17 Q. Do you recall Jackie Wheeler coming up to the UBS
18 office in August of 2008?

19 A. Yes.

20 Q. Do you recall when that was?

21 A. I don't remember the specific date, no.

22 Q. Was that at the beginning, middle or end of
23 August, if you can recall?

24 A. As I recall, there was a period time when she was
25 coming up every Friday.

1 Q. And what was your understanding as to why she was
2 coming up every Friday; do you know?

3 A. Her significant other had a home up there, and I
4 think they wanted to spend the weekends up there, so she just
5 worked out of the Prescott office.

6 Q. When she would come up, what did Jackie Wheeler do
7 on these Fridays when she would visit Prescott?

8 A. She would do her own work for the most part. If
9 there was something I needed help, with she would help.

10 Q. Okay. Do you recall Jackie Wheeler coming up to
11 Prescott on or around the date of August the 22nd of the year
12 2008, the middle part of August, and doing some of her
13 administrative duties in the UBS office?

14 A. In Prescott?

15 Q. In Prescott.

16 A. As I said, there was a period of time when she was
17 coming up every Friday, if I recall. Was that a Friday?

18 Q. I don't know exactly.

19 A. I don't know, either. I know she did come up for
20 a period of time.

21 Q. And at some point when she came up, did she
22 sometimes open the mail as you had done?

23 A. Yes.

24 Q. So she sort of replaced you in doing that
25 particular duty?

1 A. Not necessarily replaced me. It was a matter of
2 who had more work and who had more time.

3 Q. If you were busy or something like, that she would
4 open the mail?

5 A. Sure.

6 Q. Do you remember a time when she opened some mail
7 that was directed to Mr. DeMocker and brought it to your
8 attention?

9 A. Yes.

10 Q. Would you describe for us how that occurred.

11 A. A box was delivered. Jackie opened it, and said
12 with some degree of shock --

13 MR. HAMMOND: Objection, Your Honor. Hearsay.
14 I didn't realize the question was calling for that.

15 THE COURT: Sustained.

16 BY MR. BUTNER:

17 Q. So, a box was delivered for Mr. DeMocker, and
18 Jackie opened it; correct?

19 A. Correct, yes.

20 Q. And did Jackie bring that box to your attention?

21 A. She did.

22 Q. How did she do that?

23 A. She asked me to come take a look at what was in
24 the box.

25 MR. HAMMOND: Objection, Your Honor. Hearsay.

1 MR. BUTNER: Did you rule on that, Judge.

2 THE COURT: I did not rule on that.

3 MR. BUTNER: It is not offered for the truth
4 of the matter.

5 THE COURT: Mr. Hammond, not being offered for
6 the truth, it is how her attention was drawn to the box, or
7 something to that nature, do you still object?

8 MR. HAMMOND: If she can answer the question
9 just by explaining that the books were brought to her
10 attention, I have no objection to that. It is the content of
11 any conversation that would be hearsay.

12 THE COURT: That would be avoided. No content
13 of the conversation.

14 MR. BUTNER: Not seeking it. I will ask more.
15 Thanks, Judge.

16 THE COURT: Okay.

17 BY MR. BUTNER:

18 Q. This box was delivered, and it had books in it,
19 and she brought that to your attention; is that correct?

20 A. She did.

21 Q. Did she bring the box of books over and show you?

22 A. I don't recall if she brought the box over or if I
23 walked over to her.

24 Q. But in some fashion you looked at the books?

25 A. Yes.

1 Q. In the box?

2 A. Yes.

3 MR. BUTNER: Could I get those scissors again,
4 Judge.

5 THE COURT: Sure.

6 MR. BUTNER: I have got four exhibits here.
7 Wait a minute, I have five. I didn't mean to grab five.
8 Okay.

9 Q. First of all, I will show you the one that is
10 already admitted into evidence. Do you recognize what is
11 admitted into evidence as Exhibit 2840?

12 A. I don't remember the specific titles of the books,
13 but I do remember the subject matter.

14 Q. In looking at that particular exhibit already
15 admitted, does that appear to be one of the books that you
16 received?

17 A. Yes.

18 Q. And let me show you what has already been admitted
19 into evidence as Exhibit 229. Will you take a look at this
20 particular exhibit.

21 Does that look familiar to you?

22 A. There was an invoice in the box, and that could
23 very well have been it.

24 Q. Would you take a look at it and see.

25 A. (Whereupon, the witness reviews a document.)

1 That is the Prescott office.

2 Q. Does that appear to be the invoice for the box of
3 books that was received at the Prescott office that Jackie
4 gave to you?

5 A. It does.

6 Q. Would you go ahead and then -- I am going to give
7 you what has been marked as Exhibit 3256. Go ahead and take
8 the scissors, and you can just cut it along that particular
9 line.

10 A. (Witness complies.)

11 Q. Looking at that particular exhibit, Exhibit 3256,
12 does that appear to be one of the books that was received by
13 you at the Prescott UBS office when they were handed over to
14 you by Jackie Wheeler?

15 A. Yes. Again, I don't remember the specific titles,
16 but the subject matters fits.

17 MR. HAMMOND: If it would save time, these are
18 already in evidence, and we will stipulate that those are the
19 same books that she saw.

20 MR. BUTNER: Okay. That would be exhibits --
21 just to clarify the record, 3256, 3257, and 3258. You are
22 stipulating that they may be admitted into evidence,
23 Mr. Hammond?

24 MR. HAMMOND: I think they are already
25 admitted in evidence.

1 MR. BUTNER: They don't appear to be marked as
2 such.

3 MR. HAMMOND: Maybe we ought to check to make
4 sure, but I believe they were all -- forgive me. I thought
5 they were all entered into evidence.

6 THE COURT: They have not been.

7 MR. BUTNER: Is there a stipulation in that
8 regard, sir?

9 MR. HAMMOND: For the limited purpose of
10 demonstrating that they are the books, as opposed to anything
11 having to do with the contents of the books, no objection.

12 MR. BUTNER: Thank you. I will go ahead and
13 cut them then, so you don't have to do that. Probably
14 breaking all the evidence rules here. I am going to stick
15 this little piece in there.

16 Q. Let me show you what has been marked on the
17 envelope as 3257, now admitted into evidence for that limited
18 purpose described by Mr. Hammond.

19 Does that appear to be one of the books
20 that was received on that particular day?

21 A. Yes.

22 Q. And then we were looking at 3256, and that's one
23 of them; correct?

24 A. Yes.

25 Q. And then showing you Exhibit 3258, does that

1 appear to be one of the books that you received?

2 A. Yes.

3 Q. If fact, looking at Exhibit No. 229, already
4 admitted into evidence, are there copies of the face sheets
5 of the books attached to that?

6 A. Uh-huh.

7 Q. Is that yes?

8 A. Yes, I'm sorry.

9 (Whereupon, the witness reviews a document.)

10 Uh-huh.

11 Q. Is there a copy of each one of those face sheets
12 of the books?

13 A. Yes.

14 Q. And what did you do with the books when you
15 received them from Jackie Wheeler?

16 A. Jackie had called --

17 MR. HAMMOND: Objection. Hearsay.

18 THE WITNESS: Sorry.

19 BY MR. BUTNER:

20 Q. What did do you with those books, Ms. Minard?

21 A. I was instructed by management to put the books
22 with the books inside in a drawer, so it was out of view, and
23 not to say anything to anybody about them, and that if
24 Mr. DeMocker requested the box, that I was to give it to him.

25 Q. What did do you with the books?

1 A. I put them in a drawer.

2 Q. Kept them at your desk in a drawer?

3 A. Yes.

4 Q. Were you concerned about that?

5 A. No. At that point, no. Nobody had asked for
6 them.

7 Q. And you didn't say anything to Mr. DeMocker about
8 having received these books; right?

9 A. No.

10 Q. The books being *Cover Your Tracks Without Changing*
11 *Your Identity; Advanced Fugitive: Running, Hiding, Surviving*
12 *and Thriving Forever; How to be Invisible; and The*
13 *International Fugitive; right?*

14 A. Yes.

15 Q. So you had those in your drawer at your desk?

16 A. Yes.

17 Q. And you didn't tell anybody about them?

18 A. No.

19 Q. To your knowledge, did anybody tell Mr. DeMocker
20 about those books being in your desk drawer?

21 A. To my knowledge, no.

22 Q. So approximately how much time went by before
23 anything happened concerning those books?

24 A. Approximately a week-and-a-half.

25 Q. And after about a week-and-a-half what happened?

1 A. Mr. DeMocker came into the office, asked if he had
2 received a box of books.

3 Q. Did he ask you?

4 A. Yes, he did.

5 Q. And what did you tell him?

6 A. I said, yes. I pulled out the box, and I gave it
7 to him.

8 Q. And what did he do with the box of books?

9 A. He took them. He took them with him when he left.

10 Q. He didn't throw them away right there?

11 A. Not that I saw, no.

12 Q. Took them home with him?

13 A. He left the office. I don't know where he went.

14 Q. And did he say anything to you about -- well, let
15 me back up a second.

16 When you gave him the box of books, was
17 the box open?

18 A. Yes.

19 Q. And did he comment about the box being open in any
20 way?

21 A. Not that I recall.

22 Q. And did he say anything to you about the box of
23 books?

24 A. He implied that his daughters had played a joke on
25 him by ordering these books.

1 Q. He implied. You can't remember exactly what he
2 said about that?

3 A. I can't.

4 Q. Kind of laughed it off as something his daughters
5 did?

6 A. Yes, uh-huh.

7 Q. Is that yes?

8 A. Yes.

9 Q. And did you do anything further in connection with
10 this box of books?

11 A. I called one of the managers. I don't remember
12 which one. It was either Jackie or maybe Tish Starks
13 [phonetic spelling], I can't recall, and told them that
14 Mr. DeMocker had asked for the box of books and I had given
15 them to him. I believe he was gone by then.

16 Q. So you notified a manager about that?

17 A. Correct.

18 Q. Now, did you receive any other notifications
19 concerning Mr. DeMocker after the box of books had been
20 picked up?

21 A. What kind of notifications?

22 Q. From any outside sources.

23 MR. HAMMOND: Object to the form of the
24 question.

25 MR. BUTNER: Okay.

1 Q. Do you understand my question?

2 A. I don't.

3 Q. Okay. Let me put it to you this way. Did you
4 ever send Mr. DeMocker an e-mail about some sort of a product
5 that was available for him to pick up?

6 A. Yes.

7 Q. Approximately when did that occur?

8 A. I don't remember. Certainly, before the arrest,
9 but as far as specifics, I couldn't even tell you the month.

10 Q. So it was after the date of the homicide on July
11 the 2nd of the year 2008, but before the time of
12 Mr. DeMocker's arrest?

13 A. Yes.

14 Q. In October of 2008?

15 A. Yes.

16 Q. And this e-mail that you sent to Mr. DeMocker,
17 what did you tell him in the e-mail?

18 A. That his golf club was ready to be picked up.

19 Q. So, had you received a notification of some sort
20 that he had a golf club that had been ordered?

21 A. Yes.

22 Q. Did you hear anything further from Mr. DeMocker
23 about that?

24 A. I don't believe so. He may have responded thank
25 you or something like that, but I don't recall specifics.

1 Q. And after October of 2008, if I understand your
2 testimony, you went on and continued working with Barbara
3 O'non; is that correct?

4 A. That's correct.

5 Q. And how long did you stay at UBS?

6 A. Until August of 2009.

7 Q. And then in August of 2009, did you leave UBS?

8 A. I did.

9 Q. And what was the reason or reasons for you to
10 leave UBS at that time?

11 A. Barbara O'non, the broker that I was working with,
12 was leaving and I went with her. It was a better opportunity
13 for me, as well.

14 Q. You went with Barbara O'non?

15 A. That's correct.

16 Q. Is that when you went over to Wells Fargo?

17 A. Wells Fargo Advisors, yes.

18 Q. You continue to work there to this day?

19 A. Uh-huh.

20 Q. Is that correct?

21 A. Yes.

22 MR. BUTNER: Thank you, Ms. Minard. I don't
23 have any further questions of you at this time.

24 THE COURT: Thank you, Mr. Butner.

25 Mr. Hammond, cross-examination.

1 MR. HAMMOND: Your Honor, to save confusion on
2 the demonstrative thing, I probably should have said let's go
3 ahead and admit all four of those books, if there is no
4 objection.

5 MR. BUTNER: No objection to those books being
6 admitted, Judge. Thank you.

7 THE COURT: They are admitted.

8 MR. HAMMOND: Maybe I should glance at them
9 first to make sure I know what they are, since I was wrong
10 once already.

11 THE COURT: Also double check the numbers, so
12 we can do that. Feel free to do that, Mr. Hammond.

13 MR. HAMMOND: I will, thank you.

14 THE COURT: If one of the attorneys can recite
15 the exhibit numbers, so I can make sure.

16 MR. BUTNER: I might be able to help because I
17 checked to make sure the books were associated with a number.
18 Here it is.

19 You moved it -- all right. *How to be*
20 *Invisible* is in the envelope marked with Exhibit No. 3258.
21 And then *Cover Your Tracks Without Changing Your Identity* is
22 in the envelope marked 3256. And then *Advanced Fugitive:*
23 *Running, Hiding, et cetera*, is in the envelope marked 3257.

24 Thank you.

25 THE COURT: Those are the exhibits that are

1 admitted. I want to clarify one thing, though. I think,
2 Mr. Hammond, you indicated for demonstrative purposes, that
3 was your understanding.

4 MR. HAMMOND: Initially it was, but I then
5 recalled as I was standing there that we had this
6 conversation before about the added complexity of
7 demonstratives, so I really don't see a reason for that.
8 With respect to these, I don't object to them simply being
9 admitted.

10 THE COURT: Okay. They are admitted at this
11 time.

12 MR. HAMMOND: Your Honor, can I confer for
13 just a moment with counsel, Mr. Butner?

14 THE COURT: Yes.

15 MR. HAMMOND: Or were you about to take a
16 break.

17 THE COURT: I was contemplating that, and we
18 really need to, because we had assembled earlier and
19 discussed legal matters, so it would be best to take a break
20 now.

21 Miss Minard, we are going to take a brief
22 recess at this time. The rule of exclusion of witnesses has
23 been invoked, and that that means -- I will give you a short
24 version at this time. You can't talk to other witnesses
25 about the case until it is over. I have a more elaborate

1 instruction that I give you when you are excused, but that is
2 what you need to know for now.

3 You will be excused and the jury is
4 excused for the afternoon recess. Please be back at five
5 after 3:00. We will start as soon as we can after that. It
6 may be a few minutes.

7 Thank you. We will be in recess. Watch
8 your step.

9 (Whereupon, the jury exits the courtroom.)

10 (Brief recess.)

11 (Whereupon, the jury enters the courtroom.)

12 THE COURT: The record will show the presence
13 of the defendant, the defense attorneys and the witness is on
14 the stand.

15 Mr. Hammond.

16 MR. HAMMOND: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. HAMMOND:

19 Q. In our desire to clear up the record, I didn't
20 properly introduce myself. I am Larry Hammond. I think, as
21 you know, I am one of Mr. DeMocker's lawyers.

22 And you and I have not met before today;
23 is that right?

24 A. That's correct.

25 Q. I just have a very few questions for you. Would

1 you tell us again, just so I have it clearly in mind, you
2 began working for UBS in Sedona in 1999?

3 A. That's correct.

4 Q. And then you moved down to the Prescott office in
5 approximately what year and month?

6 A. I began working the Prescott office July 1st,
7 2008.

8 Q. And had you spent any time in the Prescott office
9 before July 1 of 2008?

10 A. There was an interview one day with Mr. DeMocker
11 and Ms. O'non, but other than that, no.

12 Q. And then you stayed with UBS after July 1 for how
13 long a period of time?

14 A. Until August 2009.

15 Q. So your tenure with UBS was approximately ten
16 years?

17 A. Minus the one year that I was at Bank One, yes.

18 Q. So minus the year at Bank One?

19 A. Correct.

20 Q. But you were at UBS in Prescott for what turns out
21 to be a little bit more than a year?

22 A. Actually, just a little bit under, a little less
23 than a year. I moved down to the Phoenix office in June of
24 '09, and I work in the Phoenix office from June of '09 until
25 August of '09.

1 Q. So you actually were in three offices?

2 A. Total of three offices, yes.

3 Q. I would take it that during that long continuum of
4 time, you became familiar with the policies and practices of
5 UBS as a general matter; correct?

6 A. Yes.

7 Q. And both as a financial advisor and as an
8 assistant, you would have certainly been familiar with the
9 UBS policies with respect to such things as opening mail, one
10 of the things you talked about today?

11 A. Yes.

12 Q. Correct?

13 A. Yes.

14 Q. And you knew that one of the UBS policies known to
15 everybody in the company is that all mail is opened by
16 someone in the office, typically other than the person who
17 may be the particular financial advisor who may be receiving
18 that mail?

19 A. That's correct.

20 Q. And you know that there are very good reasons for
21 that in the securities industry?

22 A. Yes.

23 Q. Can you just summarize what your understanding is
24 of the reasons why a company like UBS would have a policy of
25 this type?

1 A. I think the primary concern is if there is any
2 client complaints coming through the mail that the broker
3 doesn't have the opportunity to hide them, that instead they
4 are dealt with properly.

5 Q. That is really often cited has the primary reason
6 that if a financial advisor or broker had a client problem,
7 that problem couldn't be hidden under a rug, so to speak?

8 A. That's correct.

9 Q. And there is also, I think, occasionally people
10 talk about things like, well, if people could open their own
11 mail, that might facilitate someone who is engaged in
12 stealing money?

13 A. I suppose that is a possibility, as well.

14 Q. It is fairly remote, but it is a possibility and
15 there is a reason why a company like UBS has a policy that
16 says all mail will be opened and logged in by another party?

17 A. Yes.

18 Q. With respect to e-mails that come to a financial
19 advisor, am I correct in understanding that all e-mails are
20 subject to review?

21 A. Yes, I believe so, but that is all behind the
22 scenes.

23 Q. Let's talk about what you mean by "behind the
24 scenes." There are people in UBS whose function and
25 responsibility is to periodically engage in what some of us

1 might call quality control, but it involves periodic checks
2 into e-mail traffic coming into UBS?

3 A. I am not at all familiar with the procedure, but I
4 do know that e-mail is checked.

5 Q. So people who work for UBS, particularly financial
6 advisors, would certainly know that e-mail coming in to them
7 would be subject to examination by people in the company?

8 A. I would assume so.

9 Q. And actually, often subject to review by people in
10 the company that the financial advisor doesn't even know?

11 A. I would assume they would know.

12 Q. That they might or might not -- they would know
13 that is the policy?

14 A. My assumption would be, yes. I knew. My
15 assumption is that other employees knew, as well.

16 Q. You were actually interviewed in one way or
17 another by law enforcement on about three occasions, at
18 least, in this case; is that right?

19 A. I believe so, yes.

20 Q. The first of those being on the day that
21 Mr. DeMocker was arrested?

22 A. No.

23 Q. Was that not the first one?

24 A. No.

25 Q. When was the first one?

1 A. I was sometime later. Again, I don't remember
2 precisely when it was, but it was not the day that he was
3 arrested.

4 Q. Do you recall being interviewed by someone from
5 the sheriff's office?

6 A. Yes.

7 Q. On the date of Mr. DeMocker's arrest?

8 A. Oh, on the date of arrest.

9 Q. What did I say before? Did I misspeak?

10 A. I don't know if you misspoke or if I
11 misunderstood, but I thought you meant on the day of the
12 murder, and it was not on the day of the murder.

13 On the day of the arrest, I don't recall
14 if I was interviewed that day.

15 Q. Do you recall being at the UBS office that day?

16 A. I was at the Prescott office that day.

17 Q. The Prescott office of UBS?

18 A. Yes.

19 Q. Do you recall speaking to an officer, a woman,
20 whose name is Wendy Parkinson?

21 A. I don't remember specific names.

22 Q. And you don't have a specific memory of
23 communicating with someone from the sheriff's office during
24 the time that the sheriff's office personnel were there at
25 the UBS Prescott office executing a search warrant?

1 A. I remember people coming with search warrants and
2 looking through the office, yes, but I don't recall the
3 specific day.

4 Q. Do you remember whatever day it was that you
5 actually had a conversation with someone from the sheriff's
6 office on the day that they came to execute the search
7 warrant?

8 A. Again, I don't remember if it was on the day that
9 they executed the search warrant, or if they came to talk to
10 me on a different day, but I do recall talking with some
11 people, yes.

12 Q. Who do you remember talking?

13 A. I don't remember names.

14 Q. So you don't have a specific memory of talking to
15 someone, a woman officer, while the search warrants were
16 being executed?

17 A. I don't have a specific memory of that, no.

18 Q. Do you have a specific memory of being contacted
19 by telephone by an officer who was identified as the case
20 agent?

21 A. I was contacted, yes.

22 Q. Does the name McDormett mean anything to you?

23 A. It is familiar.

24 Q. Do you remember speaking to him on the telephone?

25 A. I could very well have.

1 Q. Do you have a specific memory of that?

2 A. I don't.

3 Q. Do you have a specific memory of being interviewed
4 a second time on the telephone by the representative here of
5 the county attorney's office, Mr. Butner?

6 A. Yes. I did speak with him on the phone.

7 Q. Do you think that there might have been other
8 times that you were interviewed, other than the three times
9 that you -- maybe it is fair to say that you sort of remember
10 those?

11 A. Sort of, yes.

12 Q. Do you sort of remember that there were any other
13 times that were you interviewed?

14 A. Somebody came to the Wells Fargo Advisors office
15 and talked to me there, at a point, obviously, after we moved
16 over there.

17 Q. Do you remember who that was?

18 A. I'm sorry, I don't remember names.

19 Q. But it was somebody from the sheriff's office or
20 someone associated with the prosecution in this case?

21 A. Yes.

22 Q. You have been asked, I know, in a couple of those
23 interviews and today about this matter involving the books.

24 A. Yes.

25 Q. And I think you said that you don't have a clear

1 memory of what Mr. DeMocker said to you.

2 A. You mean in terms of response?

3 Q. Yes.

4 A. I don't remember specifically what he said, no.

5 Q. And I think you said that what you could remember
6 in your mind implied that he was saying something about his
7 daughters having sent him those books as a joke?

8 A. Yes.

9 Q. Is that as much as you can recall about that?

10 A. Yes.

11 Q. And you can't recall any specific words, phrases?

12 A. No.

13 Q. Do you know where you were in the UBS office when
14 you had that communication with Mr. DeMocker?

15 A. I was in the Prescott office.

16 Q. Do you know where in the Prescott office? And I
17 shouldn't keep saying UBS office. If you see that -- if it
18 is easier for you to think about it as the Prescott office.
19 We have heard a lot about the Prescott office, and we
20 generally have some idea of the layout of the office.

21 Do you know where you were -- do you
22 recall where you were when you had the conversation with
23 Mr. DeMocker about those books?

24 A. I don't.

25 Q. You can't recall if he was at your desk, or you

1 were at his, or you were maybe walking back and forth?

2 A. I was back and forth a lot.

3 Q. So trying to get anymore specific about where that
4 conversation occurred or how it occurred, you just probably
5 aren't going to be able to help us with that?

6 A. No, sorry.

7 Q. Last thing. You mentioned in examination today
8 from Mr. Butner that -- and maybe I didn't hear you
9 correctly, that you had either received or sent an e-mail to
10 Mr. DeMocker?

11 A. Yes.

12 Q. And I think, did you say that -- was it one that
13 you recall sending to him?

14 A. Yes.

15 Q. And you are recalling now that you sent an e-mail
16 to him sometime after the date that the books were received?

17 A. I don't remember the date. I know it was before
18 Mr. DeMocker was arrested.

19 Q. But you don't know whether it was before or after
20 the date --

21 A. I don't know for sure, no.

22 Q. We generally -- the reason I ask is that we
23 generally know the date that the books were received, because
24 we have the documentation for that.

25 A. Right.

1 Q. But you don't know whether this e-mail was before
2 or after that?

3 A. I don't recall, no.

4 Q. And are you saying that you recall an e-mail that
5 you sent to him?

6 A. Yes.

7 Q. And it is your memory that the e-mail from you to
8 him -- this is a UBS e-mail; right?

9 A. Yes.

10 Q. You are at the office, you are sending it?

11 A. Yes.

12 Q. So this is one of the things that goes into the
13 great collection of all UBS e-mails?

14 A. Yes, I believe so, yeah.

15 Q. Subject to inspection by whoever inspects e-mails
16 if that happens to be part of whatever gets examined by UBS
17 quality control people?

18 A. Sounds reasonable, yeah.

19 Q. And you think that the e-mail from you to him said
20 something about a golf club having been received?

21 A. It was ready for pick up at a golf shop.

22 Q. Do you recall which golf shop?

23 A. No, I don't.

24 Q. Do you recall how you learned about it? Was it an
25 incoming e-mail?

1 A. No. I received a phone call from the golf shop.

2 Q. You received a telephone call from a golf shop?

3 A. Yes.

4 Q. Okay. And you don't know when it was, other than
5 it had to be sometime between the 1st of July when you
6 started to work there and the date of Mr. DeMocker's arrest?

7 A. Yes.

8 Q. Okay. Until today had you ever said anything
9 about this e-mail to anyone in law enforcement?

10 A. Yes.

11 Q. To whom did you say something about this?

12 A. Again, I don't know. I told one of the people
13 that interviewed me from the prosecutor's office or the
14 sheriff's office or -- I talked to a lot of different people.

15 Q. And you can't tell me which one of the various
16 interviews, that I tried to identify for you, that might have
17 been in?

18 A. No.

19 Q. Did you know that your interviews were recorded?

20 A. Yes.

21 Q. Did you know that the telephone, both of the
22 times, at least two times, when you spoke on the telephone,
23 those telephone interviews were recorded?

24 A. I did not know that.

25 Q. But if it had happened in a telephone interview

1 and it was recorded, then presumably we would have a record
2 of it?

3 A. I would assume so.

4 Q. Do you think that there is some other occasion
5 that wasn't on the telephone where you said something about
6 there being an e-mail to Mr. DeMocker about picking up a golf
7 club?

8 A. Yeah, I don't know. I don't know if it was
9 telephone. I don't know if it was a personal interview. I
10 don't know if it was recorded. I mean, I don't know. I
11 don't recall.

12 Q. Okay. Can you recall anything that the officer or
13 representative of the county attorney's office told you in
14 response to your saying that you had sent an e-mail to
15 Mr. DeMocker having to do with a golf club?

16 A. Not that I can recall, no.

17 MR. HAMMOND: Well, I think I have gotten as
18 much information as I am going to get from you. Thank you
19 very much. By the way, if I mispronounced your last name
20 along the way, I apologize for that. It was not until today
21 that I realized the emphasis was on the first syllable.

22 Thank you.

23 THE COURT: Thank you, Mr. Hammond.

24 Mr. Butner, redirect?

25 MR. BUTNER: Just a couple of questions,

1 Judge. Thank you.

2 REDIRECT EXAMINATION

3 BY MR. BUTNER:

4 Q. You were asked some questions about the UBS policy
5 in terms of a broker -- or actually a financial advisor;
6 right, not opening their own mail? Is that what it is? The
7 financial advisors don't open their own mail?

8 A. Generally there is one person in the office
9 assigned to open e-mail -- rather, the regular mail, and it
10 isn't a broker.

11 Q. So, I am trying to figure out the policy exactly.
12 In other words, is it to make sure that the financial
13 advisors don't open their own mail?

14 A. I think that is the primary reason, yes.

15 Q. And usually one person is assigned, as you put it,
16 to open the mail?

17 A. Yes.

18 Q. And in the Prescott UBS office, you were that
19 person once you started working there in July of 2008?

20 A. Yes.

21 Q. So you opened everybody's mail?

22 A. Yes.

23 Q. And when you opened everybody's mail, and I don't
24 want you to name any names or anything like that, but did you
25 ever receive any complaints, any complaint letters about a

1 financial advisor?

2 A. Ever? Since '99?

3 Q. Okay. If you were opening the mail, yes.

4 A. Actually, I was not opening the mail in '99. I am
5 sure I received some that were maybe questionable.

6 Q. So what would you do with the complaint letter
7 then? This is while were you working at UBS; right?

8 A. Right, right. I would fax it down to management.

9 Q. You would what?

10 A. Fax it to management, fax a letter.

11 Q. Fax it down to Phoenix?

12 A. Yes.

13 Q. Is that where management was?

14 A. Yes.

15 Q. And was that the policy, if you received a
16 complaint from a customer or a client, I guess is the way
17 would you put it, you would fax that complaint to management?

18 A. Yes.

19 Q. What about any other kinds of mail? Was there a
20 policy in regard to other kinds of mail that weren't
21 complaints?

22 A. It all had to be approved.

23 Q. Okay. What do you mean by that? "It had to be
24 approved"?

25 A. It would be read by a member of management and

1 signed off on.

2 Q. Every piece of mail?

3 A. Anything handwritten from a client. So, if we got
4 something from a mutual fund company, generally speaking, no.
5 But if there is some kind of a letter that the client wrote,
6 then yes.

7 Q. Any kind of handwritten letter?

8 A. Handwritten or typed, personal. Yes.

9 Q. Any type of letter from a client had to be
10 reviewed by management and approved?

11 A. Yes.

12 Q. Did people receive other items of mail at the UBS
13 office that were -- that didn't fall into the category of
14 letters from clients that just were passed on then to the
15 people that the mail was sent to?

16 A. As I recall at UBS, like I said, if it was mutual
17 funds information, that kind of thing, it would go directly
18 to the broker without approval. Annuity companies sent
19 information. So if it was product specific, then it could go
20 to the broker.

21 Q. Could you send out for something and have it sent
22 to you at work?

23 A. Yes.

24 Q. Did you ever do that?

25 A. No. You mean personal things?

1 Q. Yeah.

2 A. No, I didn't.

3 Q. Were you aware that other people on occasion did
4 do that?

5 A. Yes.

6 Q. When those people received their personal items,
7 did that stuff have to be sent down to Phoenix for approval?

8 A. You mean like packages and things like that?

9 Q. Yeah.

10 A. Gosh, I don't recall. It didn't happen all that
11 often. I think I would generally call my manager, as I
12 recall, you know, and say this came in, is that okay or
13 whatever.

14 Q. If you got a package that was directed to
15 somebody, was there a policy in effect about that?

16 A. I don't know that there was an official policy,
17 no.

18 Q. You would just do that out of an abundance of
19 caution?

20 A. Yes.

21 Q. You were kind of looking out for the company when
22 were you doing that?

23 A. Yes.

24 Q. I am going to give you an example for a moment.
25 If somebody were to ask that, say, a movie, DVD, be sent to

1 their office, something like that, would that be the kind of
2 thing that you needed to ask management about?

3 MR. HAMMOND: Your Honor, objection.
4 Foundation and relevance.

5 THE COURT: Overruled. You may answer that.

6 THE WITNESS: I think I would probably have
7 called my manager and said, look, we got this, we received
8 this, is that okay.

9 BY MR. BUTNER:

10 Q. So if I understand what your testimony is then,
11 financial advisors and people working at UBS, that includes
12 everybody except maybe the person opening the mail; right?
13 They had their mail inspected?

14 A. Yes, uh-huh.

15 Q. And if they received, as you put it, product
16 specific information, I think like things from mutual funds
17 and things of that nature, that wasn't sent down to Phoenix
18 or called -- Phoenix wasn't called about that?

19 A. No.

20 Q. But if they received some kind of personal item,
21 say like they ordered a movie or something like that, then
22 you might call Phoenix about that?

23 A. I might. I don't recall ever receiving a DVD, but
24 I probably would have.

25 Q. And was there, to your knowledge, a UBS policy in

1 effect about receiving these other kinds of personal mail
2 that necessitated someone checking with management?

3 A. I don't believe there was a policy.

4 Q. You just took that upon yourself because of
5 looking out for the company's interest?

6 A. Yes.

7 MR. BUTNER: Thank you. No further questions.

8 THE COURT: Thank you, Mr. Butner.

9 There are some jury questions,
10 Miss Minard. If you remained seated for a moment, I will
11 look at the jury questions, and depending on the number, we
12 may go on the record, which would necessitate a recess.

13 Is that all the questions?

14 THE BAILIFF: Yes.

15 THE COURT: There are still a number. I am
16 going the recess. I want to make a record of these
17 questions.

18 So remember the rule of exclusion of
19 witnesses I explained briefly to you. We are going to take a
20 brief recess, ladies and gentlemen. You remember the
21 admonition, as well, your admonition, and please be back in
22 ten minutes.

23 Thank you.

24 (Whereupon, the jury exits the courtroom.)

25 THE COURT: You can be excused at this time

1 while we were discussing the jury questions. Thank you.

2 (Whereupon, a discussion was held and reported

3 but is not contained herein.)

4 THE COURT: If you would have a seat again,
5 please.

6 THE WITNESS: Thank you.

7 (Whereupon, the jury enters the courtroom.)

8 THE COURT: The record will show that the jury
9 has returned, and Miss Minard has returned to the stand.

10 And, ma'am, I have the questions. The
11 lawyers may wish to follow-up.

12 QUESTIONS BY THE JURY

13 THE COURT: Do you know if the Prescott office
14 was without a client services assistant just prior to your
15 arrival on July 1st, 2008?

16 THE WITNESS: I believe there was a short
17 period of time that they were without an assistant.

18 THE COURT: Another question in that area. Do
19 you know if there was a period of time when the office was
20 without a full time client services assistant, to your
21 recollection?

22 THE WITNESS: In the Prescott office before I
23 arrived?

24 THE COURT: When it refers to the office, do
25 you know if there was a period of time when the office was

1 without a full time client services assistant, to your
2 recollection?

3 THE WITNESS: I don't know in the Prescott
4 office.

5 THE COURT: Follow-up to those two questions,
6 Mr. Butner?

7 MR. BUTNER: Yes.

8 FOLLOW-UP QUESTIONS

9 BY MR. BUTNER:

10 Q. Okay. Just talking about the Prescott office, you
11 interviewed for that position before you came over; right?

12 A. Yes.

13 Q. When you interviewed for that position, were they
14 without a client services assistant at that time?

15 A. No. There was somebody there.

16 Q. Was there a gap between the time that you became
17 the client services assistant there and the time that the
18 previous person had left?

19 A. I believe there was, but I don't know for certain.
20 I don't know how long.

21 MR. BUTNER: Thank you.

22 THE COURT: Mr. Hammond.

23 FOLLOW-UP QUESTIONS

24 BY MR. HAMMOND:

25 Q. You don't know for certain whether there was a

1 period of time when there wasn't a client services assistant?

2 A. That's correct.

3 Q. So your answer is?

4 A. I don't know.

5 Q. You don't know, but certainly from your experience
6 generally with UBS, you know that having a client services
7 assistant available is a UBS business practice?

8 A. Yes.

9 Q. Okay. In all of its offices?

10 A. Yes. That's correct.

11 Q. The ones that you know anything about?

12 A. Yes.

13 QUESTIONS BY THE JURY

14 THE COURT: If there was no assistant to open
15 mail, would the brokers sometimes open their own mail?

16 THE WITNESS: I have no way of knowing.

17 THE COURT: Follow-up on that, Mr. Butner?

18 MR. BUTNER: No. No questions.

19 THE COURT: Mr. Hammond?

20 FOLLOW-UP QUESTIONS

21 BY MR. HAMMOND:

22 Q. You do know that it is a regulatory requirement
23 that financial advisors not open the mail? You were a
24 financial advisor for some period of time?

25 A. Yes, that is true, but I have no idea what they

1 did in Prescott before I got there.

2 Q. And in terms of -- I don't think anybody would
3 really expect you to know particularly what somebody did
4 before you got there, but you did know that it was the
5 regulatory requirement that financial advisors, from which
6 you were one, not open their own mail?

7 A. I know it is a requirement, yes.

8 MR. HAMMOND: Okay.

9 QUESTIONS BY THE JURY

10 THE COURT: I need to read both of these
11 questions together so you can understand both of them.

12 Had Mr. DeMocker quit or taken leave, is
13 that why you had to e-mail him?

14 THE WITNESS: No. He just happened to be out
15 of the office.

16 THE COURT: Follow-up on that question,
17 Mr. Butner?

18 MR. BUTNER: No, no questions.

19 THE COURT: Mr. Hammond?

20 FOLLOW-UP QUESTIONS

21 BY MR. HAMMOND:

22 Q. You do know that during that period of time, July
23 1 to the date of his arrest, Mr. DeMocker also spent some
24 time in the Phoenix office?

25 A. Yes, I do know that.

1 Q. He was going back and forth?

2 A. Yes.

3 Q. And so there would be times when you would be at
4 the UBS office in Prescott and he would be in the UBS office
5 in Phoenix?

6 A. Yes.

7 MR. HAMMOND: Okay.

8 QUESTIONS BY THE JURY

9 THE COURT: Are you aware whether Steve had
10 received packages at UBS before?

11 THE WITNESS: Personal packages?

12 THE COURT: The question is: Are you aware
13 whether Steve had received packages at UBS before? The
14 lawyers may choose to follow-up, if they wish.

15 THE WITNESS: Off the top of my head, that is
16 the only one that I recall.

17 THE COURT: I will ask if there is follow-up
18 on that specific question. Mr. Butner?

19 FOLLOW-UP QUESTIONS

20 BY MR. BUTNER:

21 Q. To your knowledge, did he receive any packages
22 after the ones that you were placed in charge of, so to
23 speak?

24 A. You mean after the one received with the books in
25 it?

1 Q. Right.

2 A. Again, I don't recall.

3 Q. You don't recall receiving any other packages?

4 A. Personal packages.

5 MR. BUTNER: Thank you.

6 THE COURT: Mr. Hammond?

7 FOLLOW-UP QUESTIONS

8 BY MR. HAMMOND:

9 Q. Do you know whether in the years that Mr. DeMocker
10 worked for UBS he had ordered and received personal packages
11 before?

12 A. I have no way of knowing.

13 Q. Never had a conversation with him about that?

14 A. About receiving other packages, no.

15 Q. Things like things ordered from mail order houses
16 and things of that sort?

17 A. I don't believe so, no. Not that I recall.

18 Q. Never had a conversation with him?

19 A. I don't believe so.

20 MR. HAMMOND: Okay.

21 QUESTIONS BY THE JURY

22 THE COURT: Did he tell you that he was
23 expecting a package?

24 THE WITNESS: No.

25 THE COURT: Follow-up, Mr. Butner?

1 MR. BUTNER: No follow-up.

2 THE COURT: Mr. Hammond?

3 MR. HAMMOND: Nothing.

4 MR. BUTNER: I do have a follow-up, Judge.

5 May I?

6 THE COURT: Yes.

7 FOLLOW-UP QUESTIONS

8 BY MR. BUTNER:

9 Q. Did Mr. DeMocker ever tell you how he knew you had
10 the package that you had in your custody?

11 A. I don't believe he knew. He asked if we had
12 received a box.

13 Q. So just kind of out of the blue he asked if you
14 had a received a box?

15 A. Yes.

16 Q. He never indicated the source of his request or
17 knowledge about that?

18 A. I don't believe so.

19 MR. BUTNER: Thank you.

20 THE COURT: Mr. Hammond?

21 FOLLOW-UP QUESTIONS

22 BY MR. HAMMOND:

23 Q. I think I asked you some of these questions
24 before, but do you have any memory of where you were and
25 where Mr. DeMocker was when this conversation occurred?

1 A. I don't.

2 Q. Do you have any memory of there being anything
3 clandestine or secret about his inquiry to you?

4 A. No.

5 Q. Anything that would cause a third party to think
6 that there was something secret going on here?

7 A. No. It was just an open question. Did a box come
8 for me, something to that effect. Again, I don't remember
9 specifics.

10 QUESTIONS BY THE JURY

11 THE COURT: Do you remember what golf shop
12 called about the club?

13 THE WITNESS: I don't remember.

14 THE COURT: Follow-up, Mr. Butner?

15 MR. BUTNER: No follow-up.

16 THE COURT: Mr. Hammond?

17 MR. HAMMOND: No.

18 THE COURT: May Miss Minard be excused as a
19 witness, Counsel?

20 MR. BUTNER: She may, Judge.

21 THE COURT: Mr. Hammond?

22 MR. HAMMOND: Could I have just a moment, Your
23 Honor.

24 THE COURT: Of course.

25 MR. HAMMOND: Your Honor, I think she does

1 need to remain subject to recall.

2 THE COURT: Miss Minard, you will be excused
3 as a witness for now. There is a possibility that you may be
4 recalled. I will explain the rule of exclusion of witnesses
5 that applies in this case. This means that you cannot
6 communicate in any way with other witnesses about your
7 testimony or about any other aspect of this case until all
8 witnesses have testified. It is best that you not discuss
9 this case with anyone until the trial is completed. However,
10 you may talk to the attorneys about the case as long as no
11 other witnesses are present.

12 Do you understand?

13 THE WITNESS: Yes.

14 THE COURT: Thank you. Again, watch your
15 step. You are excused temporarily anyway.

16 THE WITNESS: Thank you.

17 THE COURT: Mr. Butner.

18 MR. BUTNER: Judge, I would like to call
19 Patrick Smith to the stand, please.

20 THE COURT: Sir, if you would please stand
21 where the bailiff directs you, and then raise your right hand
22 to be sworn by the clerk.

23 THE CLERK: You do solemnly swear or affirm
24 under the penalty of perjury that the testimony you are about
25 to give will be the truth, the whole truth, and nothing but

1 the truth, so help you God?

2 THE WITNESS: Yes, I do.

3 THE COURT: Please be seated here at the
4 witness stand.

5 Sir, would you begin, please, by stating
6 your full name.

7 THE WITNESS: It is Patrick Dewayne Smith.

8 THE COURT: How do you spell Dewayne?

9 THE WITNESS: D-E-W-A-Y-N-E.

10 THE COURT: Thank you.

11 Mr. Butner.

12 MR. BUTNER: Thank you, Judge.

13 PATRICK DEWAYNE SMITH,
14 called as a witness, having been duly sworn, testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. BUTNER:

18 Q. Mr. Smith, what is your occupation, sir?

19 A. I am an officer with the Arizona Department of
20 Public Safety.

21 Q. How long have you been an officer with the Arizona
22 Department of Public Safety?

23 A. A little over 22 years.

24 Q. And have you had any special training to prepare
25 yourself for your occupation as an officer with D.P.S.?

1 A. Yes, I have.

2 Q. What would that be, please?

3 A. Basic training with Arizona Law Enforcement
4 Training Academy. And since that time in '88, I have had
5 several other classes based on what my duties were at the
6 time.

7 Q. Okay. And the 22 years means that you started in
8 '88; right?

9 A. Correct.

10 Q. Okay. And you are performing special duties at
11 the present time; is that correct, sir?

12 A. Yes, sir.

13 Q. What are the special duties that you are
14 performing now?

15 A. Video forensics, video-audio forensics.

16 Q. Where do you perform these duties? In what
17 entity?

18 A. At the Homeland Security, the ACTIC building.

19 Q. The ACTIC building for Homeland Security?

20 A. Yes. The Arizona Counter Terrorism Information
21 Center.

22 Q. That is in Phoenix, Arizona; is that correct?

23 A. Yes, it is.

24 Q. How long have you been with ACTIC and the Homeland
25 Security?

1 A. I have been in that unit prior to us moving up to
2 the ACTIC building, but I have been there since it opened up,
3 and I think it is around nine or ten years the ACTIC building
4 was opened.

5 Q. You have been in this particular unit nine or ten
6 years?

7 A. No. I have been in this particular unit 12 years.

8 Q. And your special duties again are video?

9 A. Video-audio forensics.

10 Q. Video and audio forensics. And have you had
11 special training in regard to video and audio forensics?

12 A. Yes, I have.

13 Q. Would you describe that for us, please.

14 A. I have had several hundred hours from LEEVA, Law
15 Enforcement Emergency Vehicle Association, resolution video,
16 single scape, reference to clarification of video. And that
17 can include anything from extracting license plate and
18 enhancing it, extracting people from a video, taking
19 different stills from video and clarifying them, and as
20 simple as just setting up video cameras for people to record
21 different things.

22 Q. You work a lot with video and audio in a crime
23 investigation type of situation?

24 A. Yes.

25 Q. Does that kind of sum up what you do?

1 A. Yes, it does.

2 Q. And how were you involved in this particular case?

3 A. In this particular case, Detective Lindvay, who is
4 in the office with me, requested my assistance to record a
5 laptop screen.

6 Q. And would you explain what he asked you to do more
7 completely?

8 A. Basically, he explained to me that certain -- if
9 you put a laptop in standby mode and the battery runs out of
10 power, he wanted to document what that laptop does when it
11 runs out of power by me recording that screen.

12 Q. Was this a particular laptop that you did this on?

13 A. Yes, it was.

14 Q. Do you know which laptop it was?

15 A. No, sir.

16 Q. That was provided to you simply by Detective
17 Lindvay; is that correct?

18 A. Yes, it was.

19 Q. So tell us, first of all, when did you do this?

20 A. We started back in beginning of December. I ran a
21 few test on some screens, and resolution had come up, and the
22 29th -- can I look at my notes real quick?

23 Q. You may.

24 A. On the 29th of December, I performed a short one,
25 at that time, and on the 2nd of February, 2010, I performed

1 another one.

2 Q. So the first test examination that you did was on
3 December 29th of 2009?

4 A. Yes, it was. That was the first one that actually
5 was a resolution that I gave to him. I had tried some tests
6 before that to see what it would take to be able to record
7 the screen.

8 Q. And then did you perform a more complete test of
9 this particular laptop on February -- on or about February
10 2nd of the year 2010?

11 A. Yes, I did.

12 Q. And how long did this testing of this laptop take?

13 A. It is from February the 2nd up until the 9th of,
14 so about seven days.

15 Q. Up until the 9th of February?

16 A. Yes, uh-huh.

17 Q. Would you describe for us exactly what you did.

18 A. Basically, in our lab we have an evidence room,
19 and within that evidence room we have some cages. In the
20 later cage, which is locked from everybody but D.P.S., I set
21 up an HD camera, camcorder, and I set up an area for him to
22 put the laptop on and put it in the mode that he wanted to.
23 And I set the camcorder to record just the screen, and I set
24 up a laptop next to that camcorder, which as it is recording,
25 it would go straight to the laptop. And then I set up two

1 external two terabyte hard drives, because I didn't know how
2 long it would take, and I knew it would be a lot of
3 information.

4 Q. And all of this to record what this one laptop
5 computer was doing?

6 A. At the time it was the battery power would run
7 out. Yes, sir.

8 Q. So basically, you were tasked with the mission of
9 making a complete recording of what this particular laptop
10 computer did as it ran out of power and shut down?

11 A. That's correct.

12 Q. Did you prepare a report in connection with your
13 duties?

14 A. The first -- the first one I did, I wrote a
15 report. And the second one, at that point in time,
16 everything had been turned in at that point in time, but I
17 did give my notes and everything from the second one to you
18 guys.

19 Q. Through Detective Lindvay?

20 A. No. Actually, I gave it to someone who gave it to
21 you guys.

22 Q. At your interview?

23 A. Yes, uh-huh.

24 Q. Let me show you what has been marked as Exhibit
25 642 in this case. And I would ask if you would take a look

1 at that.

2 A. Yes, sir.

3 Q. Do you recognize that, sir?

4 A. Yes, I do.

5 Q. What is it?

6 A. This is my documentation of the first recording.

7 MR. BUTNER: And I would move for the
8 admission of Exhibit 642 at this time.

9 MS. CHAPMAN: No objection.

10 THE COURT: 642 is admitted.

11 BY MR. BUTNER:

12 Q. And then after conducting this recording of what
13 the laptop did, did you turn all of this information over to
14 Detective Lindvay?

15 A. Yes, I did.

16 Q. And he was the one that was going to analyze the
17 information?

18 A. That's correct.

19 MR. BUTNER: I don't have any further
20 questions of this witness at this time.

21 THE COURT: Thank you, Mr. Butner.

22 Ms. Chapman.

23 CROSS-EXAMINATION

24 BY MS. CHAPMAN:

25 Q. Good afternoon, Mr. Smith. Good to see you again.

1 A. Hi, how are you doing?

2 Q. You and I have met before?

3 A. Yes, we have.

4 Q. I think you referenced that we met during your
5 defense interview; is that right?

6 A. That's correct.

7 Q. I just want to go over a couple of things to make
8 sure they are clear for the jury.

9 Your work in this case was limited to the
10 two tests of recording the laptop screen; is that right?

11 A. There was some other things that I did during
12 different times of this -- basically, I transcoded some eight
13 millimeter tapes and some CDs and stuff for Detective Page.

14 Q. Okay. Is this report that was introduced as
15 Exhibit 642, is that the only report that you prepared in
16 this case?

17 A. No. There was another one for the transcoding of
18 the tapes.

19 Q. That was to take an audio tape and put it in a
20 different format; correct?

21 A. A digital format; correct.

22 Q. Then you provided that digital format back to the
23 detective that had given you the audio tape; is that right?

24 A. Yes, I did.

25 Q. You didn't the examine the contents of the audio

1 tape?

2 A. No, I did not.

3 Q. You just put it in a digital format?

4 A. Correct.

5 Q. Talking about these tests of this computer, you
6 did two tests; right? One in December and one in February;
7 is that right?

8 A. Correct, yes.

9 Q. And the first test that you did, I think that you
10 told me in your interview that it took seven hours
11 approximately for the battery to run down, so you did seven
12 videotapes; is that right?

13 A. 12 -- yes, about 12 hours -- sorry, seven hours.

14 Q. You are referring to your report, which has been
15 marked and admitted as Exhibit 642?

16 A. Yes.

17 Q. Then you wrote a report based on your review of
18 that video or your recording of that video; is that right?

19 A. That's correct.

20 Q. You didn't analyze what files were affected on the
21 computer as a result of that power failure; is that right?

22 A. No, ma'am.

23 Q. You did a second recording of the laptop in
24 February?

25 A. Yes, ma'am.

1 Q. You did not write a report on that?

2 A. No, ma'am.

3 Q. That recording took several days; correct?

4 A. That's correct.

5 Q. That is because the power on the computer battery
6 was at a higher rate than it was when you did the first
7 recording; is that right?

8 A. That is what was related to me by Detective
9 Lindvay that the battery strength was different in this
10 recording compared to the first recording.

11 Q. And you did not prepare a report of the second
12 recording?

13 A. No, I did not.

14 Q. And you didn't analyze any of the files from that
15 second recording and the failure of the laptop from that
16 second recording; is that right?

17 A. Not the content, but just the files themselves, I
18 actually printed out a little sheet so I had the size of the
19 files and the date and time.

20 Q. What you were noting is that time stamps had
21 changed on files; is that right?

22 A. Changed?

23 Q. What were you noting in the paper that you are
24 referring to that notes what was changed?

25 A. Basically, when a file is recorded to a computer,

1 it gives it a time stamp. I was just verifying the time
2 stamp to the time from when we go in the room.

3 Q. You were verifying that the time stamp that was on
4 the computer was the time stamp that you had shown as well;
5 is that right?

6 A. Correct.

7 Q. Other than that, you didn't analyze the result or
8 the effect of the power failure on any of the files on the
9 laptop?

10 A. No, ma'am.

11 MS. CHAPMAN: Thank you.

12 No further questions.

13 THE COURT: Thank you, Ms. Chapman.

14 Any redirect, Mr. Butner?

15 MR. BUTNER: I have no redirect. Thank you.

16 THE COURT: Ladies and gentlemen any questions
17 for this witness? I don't see any.

18 Counsel, may Mr. Smith be excused as a
19 witness?

20 MR. BUTNER: He may be excused, Judge.

21 MS. CHAPMAN: He may, Your Honor.

22 THE COURT: Mr. Smith, you will be excused as
23 a witness. You have been with D.P.S. for some time. You
24 understand what the rule of exclusion of witnesses is?

25 THE WITNESS: Yes, sir.

1 THE COURT: I won't go through it all. It
2 does apply in this case, and you have to follow it. Okay.

3 THE WITNESS: Yes, sir.

4 THE COURT: Please watch your step.

5 Mr. Butner.

6 MR. BUTNER: I would call Detective Paul
7 Lindvay to the stand at this time, Judge.

8 THE COURT: Okay. Sir, if you would please
9 stand where the bailiff directs you, and then raise your
10 right hand to be sworn by the clerk.

11 THE CLERK: You do solemnly swear or affirm
12 under the penalty of perjury that the testimony you are about
13 to give will be the truth, the whole truth, and nothing but
14 the truth, so help you God?

15 THE WITNESS: I do.

16 THE COURT: Please be seated here at the
17 witness stand.

18 Sir, would you please start by stating
19 and spelling your full name.

20 THE WITNESS: Sure. It is Paul Alan Lindvay.
21 Last name L-I-N-D-V-A-Y.

22 THE COURT: And Alan is spelled how?

23 THE WITNESS: A-L-A-N.

24 THE COURT: Thank you.

25 Mr. Butner.

1 MR. BUTNER: Thank you.

2 PAUL ALAN LINDVAY,
3 called as a witness, having been duly sworn, testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. BUTNER:

7 Q. What is your occupation, sir?

8 A. I am currently a detective with the Arizona
9 Department of Public Safety.

10 Q. And how long have you been with the Arizona
11 Department of Public Safety?

12 A. Approximately 12 years now.

13 Q. And how long have you been a detective?

14 A. I have been a detective approximately eight years
15 now, I believe. Since 2003.

16 Q. And would you tell us about your education, your
17 educational background before you joined the Arizona
18 Department of Public Safety.

19 A. Okay. I have a high school diploma. I went to
20 Embry Riddle Aeronautical University in Prescott, where I
21 obtained a major in aeronautical science. I obtained two
22 minors, one in aviation safety and one in computer science.

23 Q. So, you are in addition to being a high school
24 graduate, a graduate of Embry Riddle?

25 A. Yes.

1 Q. Is that a double major?

2 A. A single major, double minor.

3 Q. Single major, double minor?

4 A. Yes.

5 Q. If I understood what you said, one of those minors
6 was computer science?

7 A. Correct.

8 Q. And at that point in time, is that when you --
9 When did you graduate, by the way?

10 A. It was in 1998.

11 Q. From Embry Riddle?

12 A. Yes.

13 Q. And after graduating from Embry Riddle, what did
14 you do?

15 A. I took about six months off, at which time I was
16 hired by the Arizona Department of Public Safety, and in 1998
17 I began my career with the Arizona Department of Public
18 Safety.

19 Q. And have you had some specialized training to
20 prepare yourself for your occupation as a D.P.S. officer?

21 A. Yes. I went to the Arizona Law Enforcement
22 Academy, where I graduated in 1999 and became a certified
23 peace officer, after which time I took some courses in
24 D.U.I., traffic enforcement, rules and regulations of the
25 State of Arizona, things like that.

1 Q. And did you work as a road officer for the Arizona
2 Department of Public Safety for a period of time?

3 A. I did. I was a road officer for approximately
4 four-and-a-half years.

5 Q. And after doing that for approximately
6 four-and-a-half years, did you move to a different type of
7 work?

8 A. I did. After that four-and-a-half years, I became
9 a detective, and I moved into what is called our general
10 investigation squad, where I stayed for approximately
11 three-and-a-half years.

12 Q. Then after doing general investigations -- did you
13 have additional training for general investigations, by the
14 way?

15 A. I did. I had some additional training in document
16 crimes and some homicide courses.

17 Q. And then after doing general investigations, did
18 you move into another more specialized area?

19 A. Yes. At that point I moved into computer
20 forensics.

21 Q. When did that take place?

22 A. That occurred -- let me refer back to my CV for a
23 second.

24 (Whereupon, the witness reviews a document.)

25 2006 is when I entered the computer

1 forensics unit.

2 Q. And have you had -- is that ACTIC, by the way?

3 A. It is. Arizona Counter Terrorism Information
4 Center.

5 Q. And are you in some fashion linked with the
6 Department of Homeland Security while working at ACTIC?

7 A. No. I worked for the Arizona Department of Public
8 Safety. Department of Homeland Security has something to do
9 with the ACTIC, but I am not exactly sure what the role is,
10 and they don't dictate anything that happens within our
11 computer lab.

12 Q. I didn't mean to suggest that. I just meant, are
13 you sort of working with the Department of Homeland Security
14 when you're working at ACTIC on occasion?

15 A. We can, yes.

16 Q. Is that why you are at the same location?

17 A. Yes.

18 Q. Since moving to ACTIC in 2006, have you had
19 specialized training in computer forensics?

20 A. I have had over 750 hours of specialized training
21 in computer forensics.

22 Q. Would you describe that specialized training in
23 computer forensics for us, please.

24 A. I have taken several classes from an organization
25 called Guidance Software. Guidance Software makes the

1 software which we use to investigate computer crimes.

2 There is another organization called
3 AccessData. They also make forensic software which we use to
4 investigate computer crimes. I have taken several courses
5 through them.

6 There is an organization called the
7 National White Collar Crime Center. I have taken several
8 cases through them. I am also a contract instructor for
9 them. I teach three of their courses. They specialize in
10 computer forensics.

11 I took a long course through an
12 organization called the International Association of Computer
13 Investigative Specialists, which is IACIS for short. They
14 are a body which is heavy training for computer forensics. I
15 have taking their two-week course, and I also obtained a
16 certification through them, actually two certifications. One
17 is a computer collection -- CECS, Computer Evidence -- I can
18 never remember.

19 Let me refer back to my CV and explain
20 what it stands for.

21 Q. This isn't a test, okay?

22 A. It seems like it.

23 CECS is Certified Electronic Evidence
24 Collection Specialist. And I also obtained my CFCE, which is
25 Computer Forensic Computer Examiner through them.

1 And two more things real quick. I have
2 taken two courses through an organization called SANS, which
3 is Assist Audit Network Security. They are more of the
4 corporate side training for computers. I have obtained two
5 certifications through them. One called GSCC, which is Geac
6 Security -- Geac Security Central Certification, and one
7 called GCIH, which is Geac Certified Incident Handling.

8 And there is a small handful of other
9 little courses I have taken.

10 Q. And you indicated that you actually teach courses
11 for the National White Collar Crime Center?

12 A. I do.

13 Q. What courses do you teach?

14 A. One is STOP, which is Secure Techniques for
15 On-line Preview. One called BDRA, which is Basic Data
16 Recovery and Acquisition. And one called IDRA, which is
17 Intermediate Data Recovery and Analysis.

18 Q. And in taking all of these classes, what in
19 essence was the goal of all of these classes?

20 A. The goal of these classes is to teach you to be
21 able to forensically take a computer and look at its contents
22 without changing the data in any way and be able to report
23 accurately on what is there.

24 Q. And you do this for legal purposes, testimony in
25 court?

1 A. Correct. Plus it also gives you the background as
2 to how the computers work, how the operating systems work and
3 things like that.

4 Q. And have you been qualified as an expert witness
5 in any court or courts in the State of Arizona?

6 A. I have not yet.

7 Q. This is the first time you have been asked to
8 testify in a court in Arizona?

9 A. It is. Well, with the exception of when I was in
10 Highway Patrol, I testified for some criminal traffic and for
11 some criminal traffic.

12 Q. I should more carefully ask my question. I mean,
13 in regard to computer forensics, this is the first time you
14 have been asked to testify in an Arizona court?

15 A. Yes.

16 Q. And in connection with this particular case, State
17 versus Steven DeMocker, did you perform any particular tasks
18 in connection with this case?

19 A. I did.

20 Q. What was the first thing you were involved in?

21 A. The first thing I was involved in was there was a
22 laptop which was in the custody of Yavapai County Sheriff's
23 Office, and when the -- when the examination of the device
24 had began, they noticed that there was some time stamps for
25 files on that that had been dated after the time in which the

1 laptop had been seized and was in Yavapai County Sheriff's
2 Office custody. Typically, that is a bad thing, however,
3 through some investigation, which I was not a part of, it was
4 related to me that --

5 MS. CHAPMAN: Objection. Hearsay.

6 THE COURT: Sustained.

7 THE WITNESS: Okay.

8 BY MR. BUTNER:

9 Q. Stop at that point, Detective Lindvay.

10 There were some, if I understood your
11 testimony, there were some times that appeared on a laptop
12 that had been seized by the Yavapai County Sheriff's Office
13 that were times that came after the time of seizure by the
14 sheriff's office?

15 A. Correct.

16 Q. And were you asked to perform any investigation in
17 connection with that state of affairs?

18 A. I was. I was asked to see if I could come up with
19 a reason why those time stamps would have appeared after the
20 time of seizure.

21 Q. Let me show you what has been marked for
22 identification purposes as Exhibit No. 3312.

23 Take a look at that.

24 A. Okay.

25 (Whereupon, the witness reviews a document.)

1 Q. Okay. You have just examined Exhibit 3312; is
2 that correct, sir?

3 A. Yes.

4 Q. And do you recognize Exhibit 3312?

5 A. I do.

6 Q. What is it?

7 A. It is a laptop which was provided for me. At the
8 time it was evidence item -- or was Item 411 through Yavapai
9 County Sheriff's Office.

10 Q. So is it the laptop that you were just discussing
11 in your previously testimony with the time issue?

12 A. Yes.

13 Q. And were you provided any information as to where
14 that laptop came from?

15 A. I believe --

16 MS. CHAPMAN: Objection. Calls for hearsay.

17 MR. BUTNER: Not yet it doesn't, Judge.

18 THE COURT: It was a yes or no, whether he was
19 provided information. He may answer that as yes or no.

20 BY MR. BUTNER:

21 Q. Who did you get the information -- I take it -- it
22 is a yes or no question first.

23 Were you provided any information in
24 connection with that laptop as to where it came from?

25 A. Yes, I was.

1 Q. And who provided you the information?

2 A. Detective Steve Page with the Yavapai County
3 Sheriff's Office.

4 Q. Okay. And what was your understanding as to where
5 the laptop came from?

6 MS. CHAPMAN: Calls for hearsay.

7 THE COURT: Mr. Butner?

8 MR. BUTNER: Judge, it is really not being
9 offered for the truth of the matter asserted at this point in
10 time, and the State will lay further foundation through
11 Detective Page and the people that actually seized this.

12 THE COURT: I want to have a side bar on that.

13 Ladies and gentlemen, please feel free to
14 stand and stretch if you wish. The witness may do that also.

15 (Whereupon, a discussion was held off the record.)

16 THE COURT: Thank you, ladies and gentlemen.

17 Thank you, Mr. Butner. You may continue.

18 MR. BUTNER: Thanks, Judge.

19 I will withdraw that last question about
20 what Detective Page conveyed to you and your understanding.

21 Q. You simply got this from Detective Page.

22 A. Yes.

23 Q. And after receiving this computer from Detective
24 Page, what steps did you take in your analysis of the
25 computer addressing the issue of the time stamps being --

1 arriving at a point in time which was after the time that the
2 sheriff's office had seized the computer?

3 A. Okay. The first thing I did was I wanted to see
4 what the power settings were on the laptop. So for instance
5 what happens when you close the lid, what happens when you
6 press the power button, things of that nature.

7 What I did was I took the original hard
8 drive out of -- how do you want me to refer to the laptop?
9 As item -- I forgot the number.

10 Q. The exhibit, it has not been admitted at this
11 point in time. I think we will wait. Let's call it -- you
12 described it as Evidence Item 411; right?

13 A. Correct.

14 Q. To clarify for the record, it is Evidence Item
15 411, and it is marked for identification as Exhibit 3312. I
16 think your report and the documentation of your examination
17 calls it Item 411; right?

18 A. Correct.

19 Q. That is probably acceptable and probably easiest
20 to work with. So go ahead and refer to it as Item 411.

21 A. So I took the original hard drive out of Item 411,
22 and I attached it to a device called a Hard Copy 2 device.
23 This device will make a bit for bit cloned copy of that hard
24 drive to a secondary hard drive. What I mean by bit for bit,
25 I mean it literally reads the one's and zeroes exactly as

1 they are off of one hard drive and puts them in the exact
2 same way on the second hard drive, so it is an exact
3 duplicate copy.

4 I then took what I called a cloned copy,
5 and put it into Item 411, at which time I was able to boot
6 off the cloned drive.

7 Q. Okay. You have to go, for me, in particular,
8 Detective Lindvay, you are going to have to go rather slowly.
9 So let's go step-by-step or you are going to lose me, and you
10 are starting to lose me already.

11 A. Okay.

12 Q. Step 1 is, if I understood what you said, you
13 cloned the hard drive?

14 A. Correct.

15 Q. Does that kind of sum up what you did?

16 A. Yes.

17 Q. Step 1 is you cloned the hard drive. What did you
18 do after Step 1?

19 A. I took the cloned hard drive, the exact copy, and
20 I put it into Item 411.

21 Q. Step 2 is you put the cloned copy --

22 A. Correct.

23 Q. -- into Item 411. All right.

24 And what did you do for Step 3, then?

25 A. Step 3 was to power on the laptop.

1 Q. All right. And what was the purpose of powering
2 on the laptop at that point in time?

3 A. The purpose was to get into the actual Windows
4 operating system itself and look at the power settings for
5 how it was configured, or as I said before, when you push the
6 power button, shut the lid on the laptop, things like that.

7 Q. So you were checking to see the configuration of
8 the power settings?

9 A. For the laptop, correct.

10 Q. Does that accurately sum up what Step 3 was?

11 A. Yes.

12 Q. And then moving to Step 4, what was Step 4 in your
13 analysis?

14 A. Step 4 was actually get into the operating system.
15 Once you push the power button and the laptop boots up into
16 the Windows operating system, I was presented with a log-on
17 screen.

18 Q. Step 4, you get into the operating system. What
19 type of operating system did Item 411 have?

20 A. It is Windows XP.

21 Q. That is a really common type of operating system;
22 right?

23 A. Yes.

24 Q. That is the kind that almost all of us have on our
25 computers these days; right?

1 A. Yes, or newer.

2 Q. If you have the newer system. It is Windows XP
3 operating system, and you analyzed that. You said you were
4 going to get into the Windows XP operating system; right?

5 A. Correct. I was provided with a log-on screen, and
6 there was a user name provided to me, and that was Steven
7 DeMocker.

8 Q. And so is that the point in time -- I mean, if I
9 understand how this works, is that the point in time when you
10 need to know a password to get into the computer?

11 A. Yes.

12 Q. Did you have the password available?

13 A. I was provided the password by Detective Steve
14 Page.

15 Q. And so what was Step 4 then -- I mean, Step 5, I'm
16 sorry?

17 A. Once I put in the correct password, it went into
18 the operating system itself, at which time I was able to go
19 into the power options in Windows XP, the configuration for
20 the power options, and I was started to look through it and
21 see what the settings were and document those.

22 Q. Why were you documenting the power options?

23 A. A theory that I had come up with before I even
24 started was that the laptop was in what we call standby mode
25 when it was seized by Yavapai County Sheriff's Office.

1 You want me to explain what standby mode
2 is right now?

3 Q. Yes, I do.

4 A. Standby mode is a power setting where the computer
5 basically powers down to a very minimal power state. The
6 information that is up in the memory of the computer stays
7 active off of a small trickle charge from a battery which is
8 contained within that laptop.

9 Basically what happens is the computer is
10 shut down for all intents and purposes, except the
11 information -- let's say you have a document up on the
12 screen. That information is up in the memory of the
13 computer. The battery provides enough trickle charge to the
14 computer to keep that memory active, so that when you push
15 the power button again, your computer comes up very quickly
16 and puts back on the screen exactly what was there before it
17 went into standby mode.

18 Q. If you were to just glance at the computer, does
19 it look like it is off when it is in the standby mode?

20 A. It does with one exception. On this particular
21 laptop, there is a little moon icon on the little display
22 that is right underneath the screen, and the moon icon turns
23 green to tell you that it is in sleep mode.

24 Q. Is sleep mode the same as standby mode?

25 A. Standby and sleep are interchangeable, yes.

1 Q. So when you first got this computer and started
2 examining it, was it in this standby mode?

3 A. No, it was not.

4 Q. What mode was it in when you got it?

5 A. When I got it, it was completely powered off.

6 Q. And did you -- were you able to ascertain how it
7 got to be in the completely powered off status?

8 A. I came up with a very reliable -- what I consider
9 to be very reliable indication of how it got that way.

10 Q. What was your very reliable indication of how it
11 got that way?

12 A. Through research and testing, I came to the
13 conclusion that when the Yavapai County Sheriff's Office took
14 the laptop into custody, it was in sleep mode. Over time,
15 the battery that was in the computer, that little trickle
16 charge I was telling you about, depleted the battery down to
17 a point to where the computer could no longer stay on.

18 One of the functions of the computer is
19 once it gets to that point, in an attempt to save that data
20 that is up in memory, it goes into what we call hibernation
21 mode. So what it does is it starts itself automatically,
22 takes that data that is in memory and tries to write it to
23 the hard drive now. So once the battery dies, the data that
24 is up in that memory is now written to the hard drive, so
25 that when you push the power button again and it comes out of

1 hibernation mode, you see the exact same screen you had
2 before it went into hibernation mode.

3 It is basically another way of starting
4 up quickly. I guess the best way to explain it is when you
5 power the computer all the way off, it takes a long time for
6 it to start back up. When you go in hibernation mode, it
7 takes a slightly less amount of time to start up. If you are
8 in sleep mode it is faster than that.

9 Q. Let me stop you. You went kind of fast there, and
10 I am not sure I understood everything you said, so let's kind
11 of go slowly, please.

12 You came up with what you believe to be a
13 very reliable hypothesis as to what happened with the
14 computer; is that correct?

15 A. Correct.

16 Q. And the hypothesis, if I understood your
17 testimony, related to the trickle charge that maintained what
18 was in the computer at the time that the operator stopped
19 using it?

20 A. Correct.

21 Q. Does the operator have to put the computer into a
22 specific state in order for that to occur? In other words,
23 did the operator have to put the computer into this sleep or
24 standby mode?

25 A. From -- at the beginning, I was telling you I

1 checked the power settings for the laptop. One of the
2 settings is if you close the lid on the laptop, it
3 automatically goes into sleep mode. If the user is using it
4 and they close the lid, it is going to go into sleep mode.

5 Q. Or if anybody even comes by and just closes it, it
6 goes into that mode; is that correct?

7 A. Correct. If the lid is closed, it goes into sleep
8 mode.

9 Q. It goes into sleep mode whether the computer is in
10 sleep mode or it is on; right?

11 A. No. If it is already in sleep mode, it doesn't
12 have to put itself into a second state of sleep mode.

13 Q. It remains in sleep mode, in other words; right?

14 A. Yes. It would stay in sleep mode.

15 The one thing I can tell you is if you
16 open the lid back up, it automatically starts booting itself
17 back up. If the lid was accidentally opened by somebody, it
18 would start booting itself back up.

19 Q. So your hypothesis, then, is that the computer was
20 seized and the lid was shut?

21 A. Yes.

22 Q. And after the lid was shut, you described how this
23 trickle charge started working; is that correct?

24 A. Correct.

25 Q. And would you explain that again. What did the

1 trickle charge do?

2 A. It is just basically the state of the battery. A
3 battery has a charge to it. Over time, that information that
4 is up in memory, it needs a little bit of a charge to keep
5 that current or to keep it up there. So that battery is
6 going to deplete over time to keep that information alive.

7 Q. So with the lid shut and the computer in the sleep
8 mode, the trickle charge keeps going to the computer,
9 maintaining that information in the computer that was up on
10 the screen?

11 A. Correct.

12 Q. So that whenever the operator comes backs and
13 flips up the lid and starts to work again, it will -- is the
14 right word "boot up" at that point?

15 A. Correct.

16 Q. It will boot up, and you will get that screen back
17 that you were using at the time?

18 A. Yes.

19 MR. BUTNER: I know you would like to get your
20 testimony done today, Detective Lindvay, but the Judge has
21 indicated to us that he wants us to take a break at about ten
22 minutes till, and I glanced over my shoulder, so I think
23 right about now is the time when we should take a break.

24 THE COURT: Thank you, Mr. Butner. I did ask
25 that we do that.

1 Detective Lindvay, thank you. You will
2 be excused at this time and for the recess. You may step
3 down. Remember that the rule of exclusion of witnesses is
4 invoked. Thank you. You may step down at this time.

5 And I am going to need to speak to the
6 jury just a moment. Ladies and gentlemen, we will take the
7 evening recess. Please be -- actually, let me see Phil a
8 second.

9 Ladies and gentlemen, excuse me. We will
10 take a recess then, and I will ask you to be back in the jury
11 room at 9:00 a.m. tomorrow. Start as soon as we can. And
12 remember the admonition.

13 And I am going to ask the parties to
14 remain a moment. Thank you.

15 (Whereupon, the jury exits the courtroom.)

16 (Whereupon, a discussion was held and reported
17 but is not contained herein.)

18 (Whereupon, at 4:49 p.m. the case was adjourned
19 to resume at 9:00 a.m. on September 16, 2010.)

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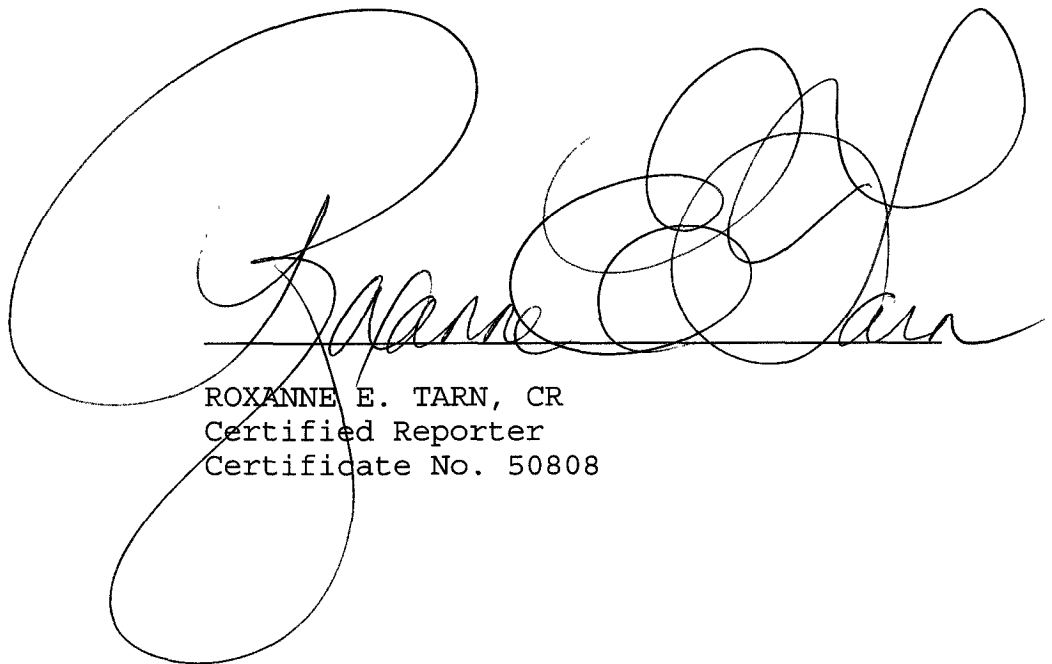
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C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter
in the State of Arizona, do hereby certify that the foregoing
pages 1 - 223 constitute a full, true, and accurate
transcript of the proceedings had in the foregoing matter,
all done to the best of my skill and ability.

SIGNED and dated this 9th day of November,
2011.



ROXANNE E. TARN, CR
Certified Reporter
Certificate No. 50808